UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555 (JMP)

08-01420 (JMP)(SIPA)

- -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- -x

In the Matter of:

LEHMAN BROTHERS INC.,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 14, 2009

10:12 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

I. UNCONTESTED MATTERS:

HEARING re Case Conference

HEARING re Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for an Order Authorizing the Retention and Employment of Ernst & Young LLP as Auditors and Tax Services Provider Nunc Pro Tunc to the Commencement Date

HEARING re Debtors Motion Pursuant to Section 365(d)(4) of the Bankruptcy Code for an Extension of the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property

HEARING re Debtors Motion Pursuant to Section 1121(d) of the Bankruptcy Code Requesting Extension of Exclusive Periods for the Filing of a Chapter 11 Plan and Solicitation of Acceptances Thereof

HEARING re Debtors Motion, Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, for Authorization to (i) Assume a Subscription Agreement and Certain Other Agreements with Wilton Re Holdings Limited, (ii) Amend Said Subscription Agreement, and (iii) Fund the Capital Commitment Pursuant to Said Subscription Agreement

HEARING re Motion for Relief from Stay to Prosecute Adversary Proceeding Against Lehman Commercial Paper, Inc., Pending in the Bankruptcy Court for the Eastern District of California and for Other Appropriate Relief and supporting Declaration of Walter E. Alexander and supporting Declaration of T. Scott Belden

HEARING re Motion for Relief from Stay NOTICE OF MOTION OF CORUS BANK, N.A. FOR (I) A DETERMINATION THAT THE AUTOMATIC STAY DOES NOT APPLY, OR ALTERNATIVELY (II) RELIEF FROM THE AUTOMATIC STAY

HEARING re Debtors' Motion Requesting Joint Administration of Chapter 11 Cases (Luxembourg Residencial Properties Loan Finance S.a.r.l.)

HEARING re Debtors' Motion Requesting Joint Administration of Chapter 11 Cases (BNC Mortgage LLC)

HEARING re Debtors' Motion Directing that Certain Orders and Other Pleadings Entered or Filed in the Chapter 11 Cases of Affiliated Debtors be Made Applicable to Luxembourg Residential Properties Loan Finance S.a.r.l. and BNC Mortgage LLC (Luxembourg Residencial Properties Loan Finance S.a.r.l.)

HEARING re Debtors' Motion Directing that Certain Orders and Other Pleadings Entered or Filed in the Chapter 11 Cases of Affiliated Debtors be Made Applicable to Luxembourg Residential Properties Loan Finance S.a.r.l. and BNC Mortgage LLC (BNC Mortgage LLC)

II. CONTESTED MATTERS:

HEARING re Motion of The Walt Disney Company for Appointment of Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code

HEARING re New York State Comptroller's Motion To Appoint A Trustee

HEARING re Motion of The Bank Of New York Mellon Trust Company, N.A. as Indenture Trustee, for Order Pursuant to Bankruptcy Rule 2004 Directing Examination of, and Production of, Documents by Lehman Brothers Holdings, Inc., Lehman Brothers, Inc., Lehman Brothers Commodity Services Inc. and Barclays Capital Inc.

HEARING re Debtors' Amended Motion Pursuant to Bankruptcy Rule 1007(c) to Further Extend the Time to File the Debtors Schedules, Statements of Financial Affairs, and Related Documents

HEARING re Notice of Presentment of Stipulation and Agreed Order Providing for Lehman Brothers Inc.'s Assumption and Assignment of Administrative Agency Agreements to Lehman Commercial Paper Inc.

HEARING re Debtors' Second Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Approving the Assumption of Open Trade Confirmations

HEARING re Debtors' Motion for an Order Pursuant to Section 365 of the Bankruptcy Code Approving the Assumption or Rejection of Open Trade Confirmations

HEARING re Debtors' Motion for an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Pre-Petition Derivative Contracts

A. ADVERSARY PROCEEDINGS:

Federal Home Loan Bank of Pittsburgh v. Lehman Brothers Special Financing Inc., et al.

Pre-Trial Conference

Sola Ltd. v. Lehman Brothers Special Financing Inc.

Pre-Trial Conference

SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS:
III. UNCONTESTED MATTERS:
HEARING re Trustee's Motion for an Order Pursuant to 365(d)(4) of the Bankruptcy Code Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property

IV. CONTESTED MATTERS:
HEARING re Trustee's Motion for an Order Granting Authority to Issue Subpoenas for the Production of Documents and the Examination of the Debtors' Current and Former Officers, Directors and Employees and Other Persons

HERAING re Notice of Presentment of Stipulation and Agreed Order Providing for Lehman Brothers Inc.'s Assumption and Assignment of Administrative Agency Agreements to Lehman Commercial Paper Inc.

Transcribed by: Lisa Bar-Leib

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THE COURT: Please be seated. Good morning, Mr. Miller.

MR. MILLER: Good morning, Your Honor. Harvey Miller, Weil Gotshal on behalf of the debtors. This is sort of an auspicious date, Your Honor. Tomorrow is the end of the first four months of these Chapter 11 cases. And from the perspective of some of the persons who worked on the case, Your Honor, it doesn't seem like four months. It seems like a lot more than four months.

THE COURT: Seems like a longer time to me, too.

MR. MILLER: Well, then we're in the same boat, Your Honor. Your Honor, we thought this would be a good occasion to give a status report to the Court as to the state of the estate. And Mr. Bryan Marsal is here, the chief executive officer of Lehman Brothers Holdings Inc. and he will make the presentation with Your Honor's permission.

THE COURT: That will be terrific. Mr. Marsal?

MR. MARSAL: Good morning, Your Honor.

THE COURT: Good morning.

MR. MARSAL: I appreciate the opportunity to provide the financial and operational update. The Court and U.S. trustee and unsecured committee have been very patient with us trying to prepare our numbers and trying to get the financials out to the marketplace. So I think this is a -- I think it's an important meeting and this will be really the first time

we've had an opportunity to say where we are operationally and financially.

We have prepared a presentation which I know we've shared with the Court. At least I think we shared it with the Court. I hope you've gotten a copy of it.

THE COURT: I have a copy.

MR. MARSAL: Okay. And we've also made copies for members attending today and we have filed a Form 8K with the attached presentation so that this public -- it's been distributed to the public as we speak. It can also be found on our website in the complete presentation.

In terms of the first page of the presentation, the Executive Summary, what I'd like to point out is the -- there's been significant progress been made in this case since the filing. The chaos of September 15th where we had melting assets, a loss of all accounting systems, no inventory of assets, a loss of operational support and, maybe most importantly, we lost 10,000 people with the transfer to BarCap four days after the filing.

Today I believe we have a stable situation where an orderly disposition of the assets can take place. Teams have been put in place to work those assets and I really believe the situation is very much under control. In terms of those teams or that head count, if you go to the next page, which is page 4, what I would highlight here is that today -- in the --

again, in the horizontal columns, you have 9/15 versus January 1. Today we have 509 people in total head count at Lehman, the Lehman that we're really working on. The remaining head count is at Neuberger Berman and at Aurora, which is our mortgage servicing entity. The 509 head count, we have rehired 229 primarily Legacy Lehman personnel to assist us in addition to the 130 Legacy that we have on and supplemented by an A&M team, full time team, of 150 head count. As you can see, the Lehman -- we had 9,972 at Lehman on the 15th and, again, four days later that was transferred to BarCap.

Moving on to page 5, the key A&M responsibilities, we regard our responsibilities three-fold and probably more than that but they are the three key responsibilities. First, to maximize the recovery value of the assets. We have six teams in place, six asset teams in place. Tasks are defined and really plans are either in the process of being developed or have been developed for the realization of value on those assets. The second issue is the mitigation of potential liabilities and to reconcile claims. There are some major pending questions such as the derivative claims, the unfunded commitments, parent guaranties. And we have, as Your Honor knows, some potential clearing bank claim issues.

And last but not least, meet the needs of the Court, the U.S. trustee and the unsecured creditors' committee with timely reporting. We hope that in the near future, we will

begin to correct some of the problems we've had with the reporting. And last item on that is to really identify a timely completion of an exit from this Chapter 11.

Turning the page to page 6, the cash flow -- where we are today, when we went into the proceeding, we had approximately 1.8 billion dollars of cash. Today in the debtor estates, the debtor entities have segregated, as identified in this presentation, we have 4.7 billion. The total cash position of the company, total cash balance, is at 3.3 heading into nondebtor entities at 9/14 versus approximately six billion today. In addition to that, we have a setoff of funds by JPMorgan which occurred of 484 million and a setoff by Bank of America which occurred after the filing of 509 million. Both of these occurred after the filing. Without those two setoffs, we would have 6.9 billion but I think for our purposes, we should just consider that we have six billion in the bank today.

This only covers, by the way, domestic operations. It does not include certain international operations which there's a little bit of a dispute going on between some of the administrators over there as to whose cash it is. So for purposes of this, we did not include that cash.

In terms of the next page, page 7, the financial cash flow -- this is just a cash flow of Holdings which is where we have the primary receipts and disbursements, as you see. The

receipts during this four month period, or three and a half month period, at Holdings was 1.9 billion. Our disbursements are 293 million of which you see significant amount is compensation, rent and payables with a balance being -- meeting the capital calls of real estate to preserve the value of real estate and the private equity portfolio. And this just reconciles to the prior, Your Honor.

Moving on to the next page of the presentation, this is a summary, on page 8 of -- the way the organization is set up, we have six asset teams. Those asset teams are working -- we've taken the portfolio and broken it down into a Bankbook. Bankbook is where Lehman was simply a commercial lender. It was where it would be a revolver term loan senior note type lender. The second category, Principal Investments, this is where it would be a private equity investor limited partner or general partner or just simply a proprietary investment that Lehman had made. The third category, Real Estate Assets, this constitutes about forty-two billion dollars worth of real estate, mostly in commercial but also residential real estate, mortgages. The fourth category is Derivatives Book. And again, you'll see this -- this has a global value of about thirty-eight billion dollars. I think it's thirty-eight billion dollars or thereabouts. We'll discuss what we're responsible for today. The next category, Neuberger Berman, this is the asset management company, which we retained a

forty-nine percent interest in. And the last category, Miscellaneous Assets, including aircraft and artwork that the estate has.

In terms of the Bankbook, if we go to the next page, page 9 of the presentation -- and again, the full presentation is available on the website. So if you're looking for the missing pages, just check out the website. We just wanted to highlight this for the Court. On the Bankbook, which again is the commercial loan book, and again, I stress it because what you discover with Lehman is Lehman was an investment bank, it was a merchant bank, it was a trading house and it was a commercial bank. And for some reason, there is a distinction made between bondholders and depositors which eludes me. But in essence, this was a bank and would have applied for the Bank Holding Company Act had it still been around.

In terms of the Bankbook, the thing to focus on, if you look across the vertical axis -- or the horizontal axis, you see Total Funded and Unfunded. What that means, is the funded is what was actually -- is actual loans. The unfunded is commitments that have not been funded at this time. The estate at the time of the bankruptcy was -- it had approximately thirty-two billion dollars worth of unfunded commitments. Again, a bank with thirty-two billion dollars of unfunded commitments to various companies and all of the liabilities associated with deciding not to fund those

liabilities. So one of our big tasks has been to try and get out of those -- find new homes, if you would, for our revolver commitment or try and get out of the revolving commitment without having potential claim liability against us for not meeting the terms of our original contract. On the funded side, we've had issues of just trying to collect the loans. We've made significant headway on that score which we'll discuss. What I'd urge you to focus on is the bottom line is the total commitment of 41.4 billion dollars of which 15.1 is unfunded -- is funded, excuse me, and 26.3 today remains unfunded and that we need to work on.

Turning the page to page 10, the relevance of this is while this was a bank, it was not managed as a commercial bank. It was managed really as a trading house. What we discovered was that the Bankbook was really managed by the trading floor. So what that meant is that you would assess a mark-to-market value to your loan and that was really -- there was really no grading of the loans, A, B, C, D, the quality of the loans as you would find in a commercial bank, very much a trading house approach to commercial lending. One of the first things we did was well, what have we got here. We took the loan portfolio, the outstandings, and we put them into -- we graded them. And we said -- both the outstandings and the unfunded. And the exercise has been to find out what kind of loan quality -- the good news is the quality is pretty decent. The quality of the

loan portfolio is pretty decent. The market is terrible, as you know, from a liquidity standpoint and the mark-to-market. But what you have here in a hold to maturity environment is a pretty good portfolio.

Turning the page to the next page, page 11, we took a look at the -- again, we started off with 32.6 billion dollars of unfunded revolver liability. Today we have twenty-six billion. We've made 6.3 billion go away at a cost of twenty million dollars. So to the extent that there is a cost associated with the elimination of this claim, this potential claim liability, it has cost the estate twenty million dollars to get out of the 6.3 billion dollars. We expect that that situation will continue through the coming months.

Next page, page 12, is the bank loan. This was something that has created somewhat of a stir but we think it's actually been very positive in that the open trades -- at the time of the filing, we had 1,055 open trades. We, going through those trades, assumed 750 of them. We rejected 253 and voided -- they just were not real trades -- fifty-two of the transactions. We believe that will generate for the estate approximately 600 million dollars when this -- when we take our inventory and finalize these assumed trades. That has created certain counterparty objections. We have approximately eighteen to twenty of those objections remaining. And we have been working through the original forty-three objections. So

better than fifty percent have been resolved.

Next page, on page 19 (sic), the principal investments, the private equity, is addressed. What you see on the Private Equity side, again, going down to the bottom, Total Principal Investments, we have 1409 investments. That totals 12.3 billion dollars in carrying value as of 9:30. Probably a little less today but they took a fairly conservative mark at 9:30.

Moving on to -- and if one looks at it, the invested capital is about what we have in the way of a carrying value. So there should be -- it should be worth about book value is what it looks to us to be.

Turning the page to page 14, in terms of the principal investments, again, we have a problem here in that with the private -- as we had with the revolvers in the bank, we have a problem with the private equity side in that we had four billion four of unfunded private equity commitments, investment commitments that we made to various funds. So we have been working away trying to get out of some of those commitments. We've also had to step up and make some of the commitments. We've made 226 million dollars, as you see in the second column, during this period. But by and large, it's been a reduction period. At this point in time, we've gone from 4.4 to approximately 1.9 or two billion dollars in the last column. So we are well on our way to getting out of the unfunded

private equity. And the reason that's relevant, Your Honor, is in many of these private equity deals, if you don't come up with the money for the -- at the capital call, it seriously dilutes your existing position.

Moving on to the real estate assets, the real estate assets -- I would like to correct something on this chart. The 12/31 date is incorrect. It's really 9/14. We have not completed the revaluation of the real estate portfolio but it should be as of 9/14.

The real estate portfolio, some of this is within our control and some of it's outside our control. As you read down the list, you'll see that there's a total of 42.9 billion of real estate. Some of it has been pledged. Most of it is still under our control with the exception of the -- in Europe, the receiver in Europe and UK has approximately 8.5 billion under their control. And the two receivers in Asia have 6.3 billion under their responsibility. The balance of the portfolio is either under ours or in the -- I guess with the exception of Bankhaus. Bankhaus also is managing its own position at this point in time. So, other than that --

THE COURT: Mr. Marsal, I have a question for you.

MR. MARSAL: Yes. Yes.

THE COURT: It's a question that has been occurring to me throughout the presentation but I'm really focused on page 15 when I ask a particular question about source of

information. When you come up with a number that totals 42.9 billion dollars for real estate asset values as of 9/14, where does that come from?

MR. MARSAL: It comes from the valuations that were done for accounting purposes as of 9/14. So we are very shortly going to be coming out with a balance sheet closing for 9/14. And the basis of the 9/14 valuation would be going asset by asset and valuing those assets, a mark-to-market process --

THE COURT: Does the --

MR. MARSAL: -- as of 9/14. Now what we're --

THE COURT: Does the 42.9 billion dollar number represent numbers reflected on Lehman's internal books and records as of this date or does it reflect an independent valuation process performed by your firm?

MR. MARSAL: No, it does not. It reflects the valuation that was done by the Lehman personnel as of that point in time. And what we're doing now is a complete revaluation of that -- is underway as we speak.

THE COURT: All right. So that --

MR. MARSAL: And then we'll be able to give you a different answer on this 42.9.

THE COURT: So that it's clear then, the number that we're talking about as of 9/14, when it's ultimately updated, will be a number that bears the imprimatur of an independent assessment by your firm?

MR. MARSAL: At this point in time -- that's correct. This is not an independent.

THE COURT: This does not --

MR. MARSAL: This is not. Will be.

THE COURT: -- but in the future will?

MR. MARSAL: Yes, it will.

THE COURT: Okay.

MR. MARSAL: Turning the page to page 16, where we were on 9/15, institutional knowledge was departing. Many projects were dying on the vine. Many life safety issues had arisen, particularly in projects that were underway. Today we have a real estate company in place. The personnel has been hired. We see this as being a very important component. The hiring of this real estate team in the future in terms of organizing any kind of -- a plan of reorganization around in a liquid asset such as the real estate which will take a lot longer to dispose of. So this will be the core company or the core team that will be managing that real estate portfolio for the benefit of the creditors.

Lehman is fully operational on this score. We're meeting our funding requirements, collecting those rents that need to be collected, operating as a real company again on the real estate side.

Turning the page to page 17, in terms of the asset teams, on the derivatives portfolio, which I know has

everyone's interest, we have collected over the four month period approximately two billion dollars of the derivative portfolio. We've collected since the last unsecured creditors' committee meeting approximately a billion dollars since the November 13th meeting. And as you see, of that billion dollars, 484,000 was set off by JPMorgan on -- I'm sorry? Oh, I'm sorry 484 million -- a setoff occurred on the 3rd of October.

Turning the page to the breakdown of those derivatives, we have a derivative receivable. Again, the company's number as of 9/12 -- we're in the process of revaluing all the derivative portfolio, but the valuation as of 9/12, prepared by Lehman management, was a 23.8 billion dollar receivable. That's the portion of the derivatives that we manage. There's other derivatives which are managed by the receiver in the UK and the receivers in Asia. But this is the portion that we're managing today, 23.8.

The 23.8 is made up of --

THE COURT: Can I stop you for a second?

MR. MARSAL: Yes.

THE COURT: You say that there is a portion being managed in Asia and a portion being managed in Europe.

MR. MARSAL: Principally, Europe. Principally, UK.

THE COURT: Do you have those numbers?

MR. MARSAL: Yes. We have an approximation of it.

We have the total number and by backing into it, we can subtract -- I think -- the total number is, I think, thirty-seven, thirty-eight billion of derivatives of which we're managing twenty-four. So the balance would be what are in the other jurisdictions as of --

THE COURT: Okay.

MR. MARSAL: -- as of that date.

THE COURT: Thank you. I'm bringing this up now because -- and this is probably a question for Mr. Miller later. I have some concern as to the coordination, if any, that is going on globally between and among the various pending insolvency proceedings around the world. And as part of the status report, I simply want to know what protocols exist, if any, whether or not any cross-border protocols of this sort contemplated by the model law and cross-border insolvency may be contemplated. And to what extent globally the administration of Lehman's assets wherever located are being -- that administration may be adversely affected by the lack of concrete coordination procedures. It may be that it's not being adversely affected at all. But it's something that concerns me.

MR. MARSAL: Well, I think, Your Honor, it is being adversely affected. I mean, it is being adversely affected today. The difficulty we're having is getting the various receivers to pay any attention to this action is -- been very

difficult. And while they have cooperated, it has been, as you'll see later in the presentation, it's been more of best efforts than really working together but not --

THE COURT: I understand. It's my strong sense that best efforts in this setting is not good enough. And that --

MR. MARSAL: Yeah.

THE COURT: -- it would be desirable to come up with -- and this may be aspirational -- to come up with something that is a global protocol to minimize dissonance as between and among the pending cases thereby maximizing coordination and ultimately recoveries for all.

MR. MARSAL: Your Honor, we've even called this the Peck Protocol to try and get some clout behind it. And they haven't paid much attention to that.

THE COURT: So much for my name.

MR. MARSAL: Noted --

THE COURT: By the way, you used that term without my authority.

MR. MARSAL: We changed it in the presentation. We call it the Lehman Protocol. We didn't want take those liberties. But for the other side, for the other receivers, it was effective to a point.

Turning to page 18, when we look at the derivatives, the key parts on the derivative presentation, on page 18, is -- bottom line, there are 464,000 trades that represent 23.8

billion dollars. Now, those 464,000 trades, however, are only with 3930 counterparties. So there is a concentration. And for example, JPMorgan has well over 50,000 trades with it alone. So the number of people we're dealing with is not quite as cumbersome as it might seem, although it will be a challenge going through all those trades and figuring out where we are. But I think that this task is starting to come into focus. A significant amount of momentum is building here. And maybe this won't take quite as long as we thought. At least I hope.

On the next page, page 19, the offset to that -- again, Lehman was large bookie, if you would. We had some people we owed money to and some people owed us money. This is owed --

THE COURT: You know that's going to make some quote.

MR. MARSAL: Bookie?

THE COURT: I'm sure you didn't -- did you mean to say just that?

MR. MARSAL: Well, Your Honor, that's what the matchbook's all about. You and I can -- you can bet on the Eagles and I'll bet on the Giants and we'll have a bookie do it and he'll match our book. And that's what Lehman did. And they're vigorous, in essence. But they did it in -- they actually had a matchbook, Your Honor, which is important. I mean, they were not like some other institutions which were in the financial insurance business. This was offset by pretty

much close to a matchbook. The only problem is it was a worldwide book which, when the bankruptcy occurred, everybody went their various ways and an ability to do those matches became much more difficult if not impossible.

Anyway, the total here, you see, we have 2190 counterparties representing 442,000 trades and thirteen billion dollars worth of payables that we believed we owed at this point in time. Again, we will be -- we're taking a look at that. As soon as we get the valuations done, which we hope will be by the end of February, we'll be in a better position to put, as you say, a more independent spin on this as opposed to where we were at the time of the filing.

The next page, page 20, Neuberger Berman, this is just a summary of something that Court has already blessed. So I just wanted to tell you where we are. This transaction is going well. This has actually brought new life to, I think, the management team and the business -- the erosion has stopped. We're looking at -- we pulled 800 million dollars out of the transaction, the right-hand column. And we believe that our investment there is worth approximately a billion dollars provided we can get to 150 million dollar EBITDA. We are assisting the company in getting to that 150 million dollar EBITDA. The company had a significant amount of overhead associated with a much bigger plan. We're going to skinny the plan down and make 150 million of EBITDA. And the management

of the company is fully in support of that. So this is a positive from where we were.

Turning the page to page 21, we look at other assets. We've been active on selling plane front. We have sold approximately -- we have sold the used aircraft for approximately fifty-three million dollars, a book value of fifty-seven. We have some new aircraft that we're trying to dispose of and some of other aircraft that we're trying to dispose of. And it's our hope that we'll realize book value or possibly a little greater than book value in today's environment. But at the end of the day, this is about 200 million dollars of miscellaneous assets. But the fleet's been grounded. Nobody is flying around these planes and no one is using the helicopter.

Moving on to Claims Management, Claims Management Forensic Work Streams. Again, Your Honor, in anticipation of a request for a review of certain actions of the various parties, we have -- for the last three months, there's been extensive forensic work streams underway. Those work streams would include pre-filing forensic streams. This is where the estate is trying to reconstruct the actions of what happened to Lehman in the weeks preceding and the week after the filing to try and reconstruct who did what. In terms of the clearing banks, JPMorgan, Bank of America and Citibank -- their actions that might have taken place there and what those actions meant. In

addition, we thought it necessary to reconstruct the actions of Lehman clearing banks, the DTC and Federal Reserve. And the reason -- I would underscore the Federal Reserve's actions, Your Honor. I think it is very important that we understand that in the -- that this examination or whatever examination happens, the examination has to be someone who is fiercely independent, highest integrity and is not afraid to take on everyone including the Federal Reserve for the actions that occurred in this case because I think -- I'm not accusing anybody at this time. But they have to be in a position where everyone can be examined for the conduct that occurred in this case.

In any event, Your Honor, those process -- that information is being gathered. And I would hope that we could economically -- we could use that information in the future as we do get into the examination of this.

The other forensic work streams are post-filing. This is the review of the disposition of the Lehman collateral by the various clearing banks. A significant amount of our collateral has been disposed of. We need a reasonable assessment of that disposition process. In addition, we need to take a look at the value of the collateral that was given to Barclays at the time of the LBI acquisition and determine whether that valuation was appropriate or not.

Page 24, the challenges to achieving objectives, A&M

responsibility, maximize the recovery value of the assets, what are the key issues there. The biggest problem we have is it's a very depressed ill-liquid market. Everyone is bottom-fishing. Very few people have any cash to be able to make these investments except at extraordinarily unacceptable prices.

We need access on the TSA to the interactive system so we can manage our assets. For example, get pricing on the derivatives on an ongoing basis, get the accounting system to a point where we can provide the Court and the U.S. trustee with timely financials.

We need to resolve collateral disposition issues with JPMorgan. JPMorgan remains, basically, in control of or a significant amount of assets have been pledged to JPMorgan and against potential exposure that JPMorgan might have in getting that clarified as to where we are is important to the ultimate outcome of the case.

We need to coordinate with the LBI trustee as to the disposition of the remaining of the remaining assets which are not part of the broker dealer. We think that it would be efficient for us to -- and I think the LBI trustee concurs with this. We need to find ways that we have existing teams in real estate and various areas where they may not have that capability. We have no capability on the broker dealer side but we have the capability in these other asset categories. So

to help us help them manage those assets.

LBH is -- and this is one that may hold up the exit from Chapter proceedings. And that is, LBH is a large creditor. Holdings was the bank for the world. So to the extent that -- until the world gets their cases resolved, there's going to be a very large receivable that is going to remain hanging out there in terms of uncertain value, until those estates get resolved.

In terms of -- turning the page to page 25, we look at the A&M responsibility to mitigate claims and reconcile claims, large numbers of derivative trades and counterparties. We need to have the systems in place in order to deal with that, as we talked about. And there has to be a resolution of the intercompany accounts. And this will be a very controversial matter among the creditors so it's got to be done. We've got to go through this and slug away through the various intercompany accounts, who owes what to who at the end of the day as you decide how you're going to divide the pie up with whatever that pie is.

And again, resolution of the clearing bank claims, there will become obvious issues on that score, both with the Bank of America and with JPMorgan that we will be undoubtedly presenting to you in the -- well, I guess we've already presented the Bank of America motion to you. That's the 500 million dollar setoff.

The next item on page 26, meet the needs of the court, timely reporting, that's dependent upon the systems. We've made some headway there. Barclays, I think, is trying hard. We are optimistic that we're going to overcome the TSA problems that we've had in the recent past.

And then the appointment of an examiner and the scope will affect the timeliness of the exit and the cost effectiveness of the estate. We would hope that we would be economical. We would hope that we could -- the examiner could take materials that had been gathered, to the extent that they have been gathered, and utilize them as opposed to replicating them.

As to --

THE COURT: I'll take that as a plug for the examiner dispute to come later. But this is just a status report. We're not --

MR. MARSAL: Yes.

THE COURT: We're not pre-arguing anything.

MR. MARSAL: The -- I didn't mean to do that. But I don't --

THE COURT: I know it's tough sometimes but --

MR. MARSAL: I don't get my time in front of you very often so I take advantage of it.

Closing. Closing from a business perspective, Your Honor, the administration of the case has progressed to a

stability and a control of the assets. I'm pleased with where we are on that score. I think we understand what needs to be done and I think people are doing it. We've got teams in place. In terms of a plan, I believe in the coming weeks we will be talking about a conceptual framework for a plan that we will be shooting toward. I don't think that that's that far-fetched of an idea at all at this time. Our internal objective is we would like to be out of this situation within eighteen to twenty--four months. And the one thing, again, not a plug but I think we need to all be moving. Too many people are saying this case is going to take five, six, maybe ten years. We don't see that being necessary unless people want to make it happen. And I will tell you, my team and I have no interest in working on this case for six years. There is absolutely no interest. So we are going to try and move this case along at a pace which, I think, is consistent with the objectives of the unsecured creditors' committee as well, Your Honor. At a pace that's sensible but there's no reason for this thing to be in bankruptcy for that amount of time, from our perspective anyway.

In closing, substantial progress has been made on the derivatives and will continue to be made to resolve those issues. And again, one of the biggest impediments, I think, as Your Honor has pointed out, that this is a global administration. Our timetables of getting out in two years may

not be at all consistent with the timetables of the UK receiver or of the Hong Kong receiver. So on that score, we share your desire to have better coordination, certainly on timetables.

THE COURT: Well, and apropos of that point, in order to achieve the stated objective as being in a position to exit bankruptcy in eighteen to twenty-four months -- which I think is clearly a desirable goal. Whether or not it's attainable is another question. And it seems to me that the ability to attain it depends, to some extent, upon the willingness of people subject to the jurisdiction of this Court to work cooperatively and to be rolling in the same direction. But more particularly, it requires a level of cross-border coordination that either may not be possible because of the differences in liquidation regimes or may not be possible because of the unwillingness of parties to cooperate.

But it seems to me that coming up with a global solution is a necessary prerequisite to being able to achieve goals within the bankruptcy case on the timetable that you've laid out. So it occurs to me that this is a high priority.

MR. MARSAL: Yes. That's all I have, Your Honor.

THE COURT: Thank you very much.

MS. WARREN: Your Honor, may I be heard for a moment? Mary Warren of Linklaters for the joint administrators of Lehman Brothers International Europe and the other UK companies in administration. I'd like to just briefly address some of

Mr. Marsal's remarks. I understand that Mr. Marsal is present --

THE COURT: Before you do that --

MS. WARREN: Yes.

THE COURT: I'm perfectly happy to hear from you. In the ordinary course of bankruptcy court events, people, even if they represent administrators in the UK proceeding simply just don't show up. And what I'm going to ask you do is to sit back down and I'll call on you and others who may wish to comment after I hear from Mr. Miller. So I don't want to hear --

MS. WARREN: That's fine, Your Honor.

THE COURT: I don't want to hear from you now.

MS. WARREN: That's fine, Your Honor. I thought --

THE COURT: I also think in terms of good order --

MS. WARREN: -- the presentation was over.

THE COURT: -- that just because people are aggressive doesn't mean I hear from them. So you can sit down.

MS. WARREN: Thank you, Your Honor. Let me know when it's appropriate for me to speak.

THE COURT: I sure will.

MR. MILLER: Good morning again, Your Honor. I would just like, if I might, Your Honor, correct one statement that Mr. Marsal said. In terms of the setoff of the 484 million dollars by JPMorgan, Mr. Marsal said that occurred after the filing. It was after the filing of LBHI but prior of the

filing of the two entities who were obligated to JPM. So it was a pre-filing setoff.

In connection, Your Honor, with the international coordination, just to amplify some of the things that Mr. Marsal said, there have been ongoing efforts and continuing efforts first to get a state of cooperation and then to work towards protocol with each of the foreign fiduciaries. And that has been a slow progress. But I think progress has been made in each case. As Your Honor points out, there are different governing laws and rules. And each jurisdiction works in accordance with its own jurisdiction and rules. But there has been a great deal of discussion. There has been a great deal of negotiations with the different fiduciaries. And a lot of discussion, Your Honor, with the LBIE administrators on a fairly frequent basis. And I don't know the exact status of the protocol, Your Honor, but I know there is a protocol in progress. And there is a recognition that this is a global problem. Whether we can achieve what Your Honor may have in mind in terms of a global resolution or a global stipulation, I simply don't know at this point in time, Your Honor.

THE COURT: Well, in the most generic sense, my concept is as follows. When Lehman was an operating global enterprise, command and control, as I understand it, resided in the New York office. It seems to me that at some level, command and control should continue to reside in the New York

office and that the concepts of Chapter 15 and the model law contemplate a main proceeding in situations involving multiple international insolvencies. I find it startling that in what is undoubtedly the most massive cross-border insolvency in the history of the world that the only thing that seems to be going on that I'm aware of are bilateral discussions. An example is the LBIE/LBHI protocol in whatever state it's in. And I'm perfectly happy to hear from counsel for the administrator in the LBIE case shortly on that score.

But I have broader concerns that this is a multilateral problem involving multiple liquidation regimes around the world. I don't even know off the top of my head, although you did provide me with a chart at a recent hearing, every single jurisdiction where the liquidation is currently pending. I know the number of countries to be fifteen based upon papers I've read. And I know the number of pending cases to be seventy-six based upon papers that I've read. That's an enormous coordination problem to the extent relevant. And what I'm hearing from Mr. Marsal is that it's very relevant on the most basic question of the timing of an exit strategy from this case. And it's probably relevant on a whole bunch of other fronts as well.

One example that comes to mind is simply the claims management process which I don't recall hearing about in the current status report. And it may be that we're way ahead of

ourselves in discussing it. The claims process has been undertaken in the LBIE SIPA proceeding.

In terms of claims against these estates globally, I assume that there are creditors with claims against entities that are in liquidation in foreign proceedings where the primary obligation arises within that foreign proceeding but where there is a guaranty claim that would be asserted against one of the debtors in the cases pending in this court. It seems to me, at a minimum, that there should be some effort to coordinate the claims process. I don't know what efforts are underway to do that. And I don't need to hear a report on that now. I'm simply identifying that as an example of a global case management issue that would not ordinarily be considered in the first 120 days of a massively complex case where assets are being disposed, assets are being preserved, records are being identified, employees are being hired and there are major issues of case management being addressed such as the issues identified by Mr. Marsal and his very helpful report. But I do note that there are here some unprecedented issues of coordination. And one of my concerns is that if every case is being managed in its separate silo, that is not necessarily a positive for each individual silo. And so, some overlay of global coordination, I believe, is needed. How it can be achieved is another story.

MR. MILLER: Yes, sir. I would just add to that,

Your Honor. One, there are A&M teams that are responsible for Europe, responsible for Asia. LBHI is a member of the five entity creditors' committee of LBIE. And there is constant dialogue that is going on. I believe what Mr. Marsal was referring to, Your Honor, is that LBHI will be a major creditor in many of these cases. And as a consequence of that, that was the reason why we made a very strong attempt and it was satisfied to be on the LBIE creditors' committee. I think you can view LBIE as sort of like a small Lehman. It ran basically the same kind of business that Lehman was running out of New York with its own accounts, its own trading. It traded with New York and so on. Probably that's the biggest area. Asia is behind that, Your Honor. There's also another team in Asia which is following very closely. And also we are trying to coordinate as much as possible with Mr. Giddens as the LBI trustee because there are mutual interests in there. But clearly, an overall global management, as Your Honor suggests, would be very appropriate. And we have been moving to that.

As I said, knowing the LBI situation, there is constant communication. The PWC administrators very often visit New York and there are meetings to discuss mutual issues. And one of the big issues, as Your Honor may be aware of, is mistake in payments that come to one estate and belong to the other estate which took a long period of time to work out in a formal way.

So Mr. Marsal and the estate is very conscious of the need to coordinate internationally. And that's why there are separate teams in each locality. But if we can achieve an overall global settlement, something in the order of Chapter 15, that would be beneficial, Your Honor.

But there are different objectives by the different fiduciaries. While there are seventy-six proceedings, there are fifteen main proceedings that we are concerned with. From the LBI perspective, Your Honor, the main thing under the statute is get the customer accounts satisfied, transferred, paid, whatever has to be done. And that's the goal. The goal in London with the LBIE administration is to get control of that estate, follow the dictates of that insolvency law. And there has been some litigation, Your Honor, LBIE, where there were prime brokerage accounts, primarily hedge funds, who have been trying to get their securities and cash out of that. And that's created a lot of disorder, let me put it that way. And we have cooperated with those funds who have clearing accounts and tried to find where their assets are and work with all of the different entities that are involved.

So that is underway, Your Honor. And at the next -- maybe not the next omnibus hearing, which is just two weeks, but certainly the one in February, we will prepare a report on what is happening internationally.

THE COURT: Thank you very much. Now, in terms of

the status report phase of today's agenda, I am not interested in opening up the floor to comments that members of the audience or other interested constituencies may wish to add to the status report because I think just in the interest of good order, the status report is the debtors' report to the Court and to those who have a need to find out information about the current state of the case.

To the extent that counsel for the administrators in the LBIE proceeding believes that there is a need now to express something on the record, to correct the record, or to clarify the state of play as it relates to the administration of that estate, to the extent there have been references to that during the status report, I am now comfortable in having counsel appear to be heard. But it is not a general invitation to the room to say what's on your mind.

MR. MILLER: I would just add to that, Your Honor, if I may. If there are any questions about the presentation, the Lehman website does have a list of names of A&M personnel. And I'm sure Mr. Marsal agrees, inquiries can be made off that website to the appropriate person just by looking at the website. You'll see the subject matter. And as we have done before, Your Honor, every inquiry will be responded to, maybe not satisfactorily, but we will respond to every inquiry that's made. Thank you, Your Honor.

THE COURT: Thank you.

MS. WARREN: Your Honor, thank you for the opportunity. Again, Mary Warren of Linklaters for the joint administrators of Lehman Brothers International Europe and the other UK companies and administration. I did want to briefly correct some aspects of Mr. Marsal's comments and then give Your Honor perhaps a bit of a broader report that might be useful.

I can't really sit here and agree with Mr. Marsal's characterization that the joint administrators are not paying attention to the U.S. proceeding. That is flat out incorrect. I appreciate Mr. Miller's comments on that regard. And I do want to assure Your Honor that, as you know, we've appeared at each of these hearings. We have had, as between PriceWaterHouseCoopers and Alvarez & Marsal, we've had nonstop meetings, calls and other communications about intercompany balances as between Libby, which is what we call Lehman Brothers International Europe, and LBHI. There have been tripartite discussions among PriceWaterHouseCoopers for Libby, the SIPC trustee for LBI and A&M for LBHI.

As Mr. Miller noted, LBHI participates on the Libby creditors' committee. Libby and LBI and LBHI have all worked jointly on the open trades and derivatives contracts that Mr. Marsal was referring to. That's been a cooperative process to try to resolve those all along.

Finally, Libby is working -- the joint administrators

are working with the SIPC trustee on a protocol for filing Libby-related claims in the SIPC proceeding.

As to a general protocol, Your Honor, a global protocol of the type you referred to, those discussions were fully participated in by the joint administrators. It's our understanding that due to lack of interest or lack of participation by some other parties to the proposed global agreement that that was temporarily abandoned in favor of more individual agreements, like the transition services agreements. On that score, as Your Honor knows because you approved it, LBHI and the joint administrators for LBIE entered into a transition services agreement. The joint administrators for LBIE are regularly called on under that transition services agreement along with their personnel at PWC to provide all kinds of assistance to LBHI, which we are doing, sometimes at the expense of diverting resources from needs of our own creditors which we have to balance and which the joint administrators have been doing a very good job of balancing.

Your Honor, on -- Mr. Miller's description of Libby is generally accurate. It is sort of a small version of Lehman International. It was the major trading center for the Lehman Global Group outside of New York. I would say one major difference is that Libby never had its own bank accounts. All its bank accounts were with LBHI and that's been a continuing problem and a source of negotiation between the parties.

Your Honor, in terms of the report on international status that Mr. Miller plans on giving, we're happy to provide information for that to the extent permissible under UK law and consistent with the joint administrators' obligations under UK law.

And finally, I just want to state I know that Mr. Marsal's presentation was a status report. It's not evidence because it wasn't subject to cross-examination. But I did feel it necessary to correct some of the statements.

And the last thing I would just say is that you can be comforted that the term "Peck Protocol" was never used, at least in my hearing. So I don't think anyone used your name in vain without your authorization.

THE COURT: It's okay. I now authorize it to be so used.

MS. WARREN: All right. So noted.

THE COURT: I'm actually entirely teasing when I say that. There is no protocol in place that can be given anybody's name at the moment. What I am concerned about and what I'd like you to consider with your clients, particularly, as it relates to the status report that will now be expanded to include Lehman global issues, I'd like you to consider whether or not there is either a need or if it would be desirable for there to be a standard form, although it would be specially tailored to these circumstances, cross-border protocol

permitting court-to-court communication as between this court and courts of other jurisdictions where Lehman liquidation proceedings are pending. Obviously, you'd only be most concerned with what your clients think about such communication as between the UK and the United States.

But I am concerned that absent some ability to tie together all of these estates that we run the risk of a mouse that roared problem in which some estate in some other jurisdiction may control the timing of the exit in this case. And I would consider that to be an unattractive and undesirable consequence for all estates suggesting to me -- and I have limited information. I only know what everybody tells me in court or what pleadings tell me. Suggesting to me that some creative and heroic effort needs to be undertaken for global cooperation. And it has to start somewhere. And since you were bold enough to step forward, you're going to end up with job 1, which is to deal with the UK side of this 'cause I've given you that assignment.

MS. WARREN: Your Honor, we've been fulfilling that assignment. And we're happy to take it further at your direction.

THE COURT: Okay. Thank you.

MS. WARREN: Thank you.

MR. KOBAK: Your Honor, may I be heard for two minutes on behalf of the SIPC trustee?

THE COURT: Sure.

MR. KOBAK: Thank you.

THE COURT: Although it does not open the door to further volunteering.

MR. KOBAK: No. I -- Your Honor, James Kobak, Hughes Hubbard & Reed for the SIPC trustee. I just want it to be clear that, as Ms. Warren said, we have discussed trying to work cooperatively on claims. And we indeed are in the process of trying to draft up a protocol. If I may, I'd like to go back to my office and use your name to accelerate that process. We were going to start really with LBIE because our immediate concern is how some of the claims, customer type claims, that are on both sides of the Atlantic are going to be treated. And we think there are some real -- very difficult issues there that do need to be decided on a global basis.

But I just wanted to make it clear that we, too, think there's a real need for a protocol. There may be some aspects of a protocol between the other entities as to realizing on property and so forth which aren't quite as much of a concern as ours as they are and it may be that we don't need to be part of that. But we do think that there is a need and we do intend to -- in fact, people are supposed to be drafting up something as we speak.

THE COURT: Thank you.

MR. KOBAK: And, Your Honor, I didn't intend to give

a report today. But we did give a report to -- or had a meeting with creditors right before the holidays. And if you'd like, I can hand to Your Honor, or we can give to chambers later, the slide presentation that we had for that. It's on our website. Most of the people that are in the courtroom have already heard that presentation. But I just thought it might be of interest to Your Honor.

THE COURT: If you have a handy extra copy to deliver to chambers, that would be fine. Thank you.

MR. KOBAK: Good. Fine. Thank you, Your Honor.

MR. MILLER: Your Honor reminds me that in the Chapter 11 case of Maxwell Publishing -- or Maxwell Communications, there was actually a protocol that included court-to-court communications and Judge Brozman and Chancellor Hoffman very often were in communication directly and sometimes with the parties involved. And that really expedited the conclusion of those Chapter 11 and those administration proceedings in the UK.

Your Honor, now I think we can turn to the agenda. And, with Your Honor's permission, I thought we would change the process a little bit today and go right to, as the first matters to be heard, the contested matters and deal immediately, Your Honor, with the motions relating to the appointment of the examiner. I would just point out, Your Honor, there are eleven uncontested matters which we can deal

with fairly quickly at the end of the hearing. And in connection with the contested matters, really, it's -- the major contested matter -- I don't think it's contested -- is the appointment of the examiner, Your Honor.

THE COURT: I have no objection to that change-up that you propose. And I think it's important that we address the issues of the appointment of the examiner harmonizing differences in positions, to the extent they still exist, and dealing with that in the context of having Mr. Marsal's report fresh in our minds because I do think that Mr. Marsal's report does tie neatly into this next phase of the agenda.

MR. MILLER: In that connection, Your Honor, what I would hope to do is to give the Court some perspective on the motions and the differences between the parties as they exist at this point in time. As we have previously stated to Your Honor, very early in the debtors' cases, there was consideration given to the desirability of seeking the appointment of an examiner because of all the hyperbole and media hype that emerged from the commencement of the case. That decision was deferred, Your Honor, because at the time it was under consideration, the state of the record, so to speak, was chaotic. The examiner would have to wait until there was further processing and the case was actually gotten under control.

The issue came to the forefront, Your Honor, on

October 20, 2008, by the motion that was filed by the Disney Company for the appointment of an examiner under Section 1104(c)(2) of the Bankruptcy Code. And as Your Honor is well aware, and I think everybody in the courtroom is well aware, there is no choice, there has to be an examiner appointed pursuant to that provision because under the words of the statute it's mandatory.

The actual request, Your Honor, of the Disney Company was rather a parochial request, primarily directed to the claim of the Disney Company that it had transmitted, on September 16th, I believe it was, approximately 100 million dollars in a foreign exchange transaction. And that money got caught in the system. We seem to think that it's at Citibank someplace, but it got in the system and Disney never got the money. And what Disney was concerned about was the relationship between Lehman Brothers commercial corporation, which was the foreign exchange entity, Lehman Brothers Holdings, Inc., which was the guarantor.

And after the motion was filed, Your Honor, and the recognition by the estate that there would be an examiner, negotiations proceeded with the Disney Company as to the scope of the examiner's duties. And actually, Your Honor, we reach an agreement with the Disney Company as to the scope of the examiner's duties and the investigation that the examiner would proceed.

And the Disney Company agreed, Your Honor, based upon the representations that were made on behalf of the estate, that it would be much more appropriate after the estate has been settled, control has been gotten of the systems and so on, that the examiner come in at that point in time when more concrete information could be presented to the examiner. So there was a consent to adjourn the examiner's motion to January 14, today.

The filing of any pleading in this case somehow results in joinders and additional motions. So a number of pleadings were filed. They were joinders by the Bank of America, by the Harbinger Funds. And then subsequently, Your Honor, a motion was filed on behalf of Mr. DiNapoli, the New York State controller, seeking the appointment of a trustee, or in the alternative, an appointment of an examiner with expanded powers.

And then there was another joinder to the controller's motion by the leading plaintiffs in a pending class action. All of those motions were considered, Your Honor, and at one point in time -- I think it was in the November omnibus hearing, I reported to the Court that we were in negotiations about expanding the scope of the examiner's duties. And Your Honor was quite clear, very clear in saying that don't think that you're going to submit an order to me and I'm going to rubber stamp it. That the Court had discretion as

to the scope of the examiner, you would consider suggestions, but ultimately the scope of the examiner's duties lies in your discretion.

And it was in that context, Your Honor, that we proceeded thinking about what would be the suggestions to the Court in terms of what the examiner's duties were. And we had discussions with the United States Trustee. We had discussions with the creditors' committee and we got submissions by other parties. And as we went through all of that, the law of unintended consequences has taken effect. The debtors' suggestions that are set forth in the response in our position to the motion of the New York State controller, which was filed on January 5th, and in paragraphs 31 and 32 of that response we set forth suggestions for the scope of the duties of the examiner.

As a result, there has been another burst of pleadings, Your Honor, in this matter, some of which came in last evening. Even Disney, with whom the debtors negotiated a resolution, has seen fit to criticize the debtors as attempting to limit the duties of an examiner. And I want to make it perfectly clear, Your Honor, for Mr. Marsal and the estate, the debtors are very cognizant of Your Honor's desire for complete transparency. That is the goal and that's what the debtors want.

But the debtors are being excoriated from both sides.

The unsecured creditors' committee says that our suggestions are too broad. Disney basically accuses the debtors of some kind of bad faith. Mr. DiNapoli complains that the debtors are trying to limit and contain the examiner from hiring professionals. The LBI trustee wants to make sure that the examiner is not appointed in a SIPA proceeding or it should not be appointed. And I think everybody agrees to that. So I think that's out of the picture. Barclays essentially is concerned as to certain of the debtors' suggestions and says that they are too broad.

The debtors' suggestions, Your Honor, incorporate the agreement that we reached with Disney. It is focused on the relationship between LBHI, LBCC and the transactions that occurred prior to the commencement of the case and transactions that occurred -- the LBHI case, I should say, Your Honor, and subsequent to that. And as far as Mr. Marsal is concerned and the estate is concerned, all of those transactions should be within the realm of what the examiner has to do.

The suggestion was that inter-company transactions, which Mr. Marsal alluded to, for the thirty days prior to the commencement of the Chapter 11 cases, should be reviewed. And I think we used the date September 15, Your Honor. In connection with those debtors who filed subsequently, it would be thirty days from that filing date would be the suggestion.

I could go through, Your Honor, but I think it would

be unnecessary to go through all of the suggestions which are contained in the estate's proposal, which as I say, is set forth in paragraphs 31 and 32 of the response. The creditors' committee, Your Honor, thinks that some of those are too broad. Our suggestion, Your Honor, and I think it's in one of the papers, Your Honor, once the examiner is appointed he or she should have the opportunity to craft and suggest to Your Honor what he or she should be within the scope. But there should be an initial order at least setting forth the initial program for the examiner and let the examiner get undated into this case and then make determinations.

But then we also made two other suggestions, Your Honor. We suggested that at least initially the examiner should use the resources that have been in place since September 14, and that's the work of Alvarez & Marsal. The New York State controller has raised an issue as to the independence and impartiality of Alvarez & Marsal. And I would just point out, Your Honor, Alvarez & Marsal and Mr. Marsal had no prior relationship with Lehman.

The first time that Mr. Marsal appeared on the premises of Lehman was the evening of September 14. And the first time that they actually began working was September 15. Mr. Marsal, as I pointed out, Your Honor, is not the chief executive officer of LBHI. He and other officers, members of Alvarez & Marsal have actually become directors of many of the

subsidiaries and assumed that responsibility and those fiduciary duties. We believe that the work product which they have produced, which has been very laborious, very Herculean tasks, is valuable information, which initially an examiner should resort to before coming up with a blunderbuss approach to hiring all kinds of professionals, Your Honor. So we made that suggestion.

We also suggested, Your Honor, that the examiner be a person, as Mr. Marsal alluded to, fiercely independent, ready to devote a substantial amount of time to his or her duties in this case and to answer the questions which have arisen. In constructing the suggestions that we put in, Your Honor, we took into account everything that we had heard from various parties, and not only official parties, but individual creditors who called and raised questions about what happened in Lehman; what are the relationships between the various corporations and entities. And in our suggestions, we thought that we covered those areas.

The only area, and we didn't use these famous words, Your Honor, fraud, criminal conduct and so on. But we're not limiting the examiner. Our view, speaking for Mr. Marsal, Your Honor, is that the examiner should do what the examiner thinks is appropriate within the suggestions that we made. And if there is a need for additional investigatory work, the examiner should come back to the Court and say I want to expand

my charter. And we don't propose, if we had the power, which we don't, to limit the examiner's engagement of professionals, but as the examiner believes that such professionals are necessary. This is an expensive estate to administer, Your Honor. It is running at a very high rate. I think Mr. Marsal said the run rate is thirty million dollars.

UNIDENTIFIED SPEAKER: Twenty-five million a month.

MR. MILLER: Twenty-five million dollars a month, and that's without professional fees, Your Honor. To date, there haven't been any allowed professional fees in this case. My estimation is that will go up substantially. We know, from what was reported in connection with the LBIE administration, at a meeting of creditors that PWC, the administration of LBIE, was running at, I believe it was four million pounds of week. That's a substantial amount of money. And it may be -- I have no idea, Your Honor, but it may be close to that.

So we are talking about an expensive administrative. And basically who's picking up the tab on this, it's the unsecured creditors. So the unsecured creditors' committee really has a vested interest here. And I don't wish to take the arguments from any of the other parties, Your Honor. But as far as the estate and Mr. Marsal is concerned, we are one in favor of transparency.

We think we covered the waterfront in our suggestions. They are not delimiting of the examiner. The

examiner has a perfect right to come back to this Court if he or she believes it appropriate to expand. But we think it should be sort of a gating issue. Get the examiner in there, get the examiner oriented. And then the examiner is fully free to come back to this Court and seek whatever relief he needs. And frankly, Your Honor, I can tell you in advance, we will support the examiner. We want transparency.

So with that, Your Honor, I'll leave it to the other speakers, unless Your Honor has questions.

THE COURT: No, I don't have any questions, but I have some comments.

MR. MILLER: Yes, sir.

THE COURT: And the comments are really intended to inform the observations and remarks of other counsel who may wish to be heard in connection with the appointment of an examiner.

First of all, I recognize that as it relates to the appointment process, I have no discretion to deny the motion based upon, not only the wording of the statute, but the case law that has interpreted that wording. The determination of scope, however, as you correctly observed in your remarks, is something which is left to the Court's discretion. It is my understanding that the applicable case law does not provide any meaningful guidance as to how the Court is to exercise that discretion. Accordingly, I could be arbitrary, and I don't

think that anybody would suggest that I'm abusing my discretion. But that would be a bad idea under the circumstances or probably under any circumstances.

It's for that reason that -- and I'm going to state this publicly, I suggested that a telephone conference take place involving parties in interest who had weighed in with respect to the examiner motion. And that included the United States Trustee who is present in court today with counsel. And the principal purpose of that telephone conference was to express some of the Court's concerns regarding the process that we were in the midst of, concerning the examiner motion, determination of the scope of the engagement.

And in particular, one of the things that I requested was that parties in interest at today's hearing provide guidance to the Court as to the appropriate scope of the mandate to be granted to the examiner. I asked for that informally because I believed it significant to me, in the exercise of the discretion I have just described, to know the perspectives of the various parties in interest as to the proper scope.

I don't think there's any one right answer to this question because it's very complicated. But I also think that it is unwise for us to talk about the examiner motion in isolation. I note that there are pending matters before me on today's agenda that overlap. For example, in the SIPA case, I

know that there is a motion to be heard later concerning the SIPA trustee's ability to issue subpoenas. I know that in the committee responsive papers in connection with the motion for appointment of an examiner that the committee speaks in terms of its fiduciary duty to investigate claims of the estate, that it's already involved in such an investigation, and without characterizing its position, I would say that it is suggesting that it is the appropriate fiduciary to do just that.

Additionally, there are individual discovery requests by individual creditors, a process that started early in the case but which, for purposes of today's agenda, includes a request by the Bank of New York Mellon, as indenture trustee with respect to certain issues that we'll hear later but that involve an investigation into certain facts.

Accordingly, I am concerned that we discuss not everything at once, but that we discuss the examiner motion in the context of the case that's before me. And that context is broader than simply getting started with a statutorily mandated process. For that reason, I'm letting everybody know that in order for this to be a truly efficient process, I'm viewing it holistically. And I believe that some rational approach to the allocation of responsibilities between and among those parties that have fiduciary duties to their constituencies be adopted so that parties are efficient, coordinated, and do not step on each other's toes.

Additionally, from the perspective of the overall costs of administration of the estate, unless some efficient protocol is adopted -- that's becoming an overused term this morning -- unless some efficient protocol is adopted to minimize the risk of unnecessary work being done, this process is going to be counterproductive, in my view.

For that reason, what I would like to hear from the parties is as follows. First, with respect to the scope of the examiner and the examiner's duties, please provide such guidance as you can as to what scope is appropriate. And please provide reasons as to why you believe such scope is appropriate.

Second, as to the ability of the examiner to retain professionals in addition to counsel at the outset, notwithstanding the fact that both the debtor and the committee had suggested that at least initially the examiner should depend upon the work product of Alvarez & Marsal, subject to the possible need to hire a professional later for cause shown, I believe, upon reflection, and this is not the first I've thought about it, that in order for the examiner to conduct his or her mission, however it may be defined, given the complexities of this case, that a financial professional is needed at the very beginning of the process. Because without having such a professional available, the examiner will be immediately subject to the disability of perhaps not knowing

the right questions to ask and perhaps not having the correct interpretive prism with which to assess the information provided.

For that reason, my inclination, and I want to hear comment on this, is to permit the examiner to engage a financial advisor, or for that matter, any other professional deemed material to carrying out the task defined. With the understanding that I am loathe to duplicate costs of administration unnecessarily. For that reason, my notion would be that those professionals would not be doing any duplicative work at all, but would be simply be available as sources of intelligence, good judgment, and interpretive assistance so as to enable the examiner to carry out his or her job.

Third, I am deeply concerned about the overall costs and expenses of this case. There is a tremendous amount of money in the bank. But at the burn rate described, and as it might be augmented by the additional administrative expenses associated with an examiner, over time, available cash will be expended. Just because the case is large does not mean the case should be viewed as a blank check for professionals.

I'm fully aware of the comments made the Walt Disney Company in its recently filed papers that are quite well done. By the way, most every pleading in this case is quite well done. And there is a notation within those papers that because the creditors' committee was appointed early in the case, prior

to the advent of some of the other affiliated debtors, and because there is only one set of professionals acting on behalf of the creditors' committee, that in effect this case can afford additional professionals at the examiner level. That's true up to a point. What's not true is my inclination to give the examiner what amounts to an open ended process.

My current thinking, and I'd like people to comment on this, is that the examiner, once appointed, following a dialogue with other interested parties, move forward along the lines proposed by the creditors' committee to develop a work plan and budget. And that the budget be geared to a thoughtful and deliberative process of the work that actually needs to be done, the time for getting it done, and the critical path to completing it.

Assuming such a process is undertaken, it seems to me that whatever professional may be selected by the examiner should be in a position to provide a reasonable estimate of what that work plan should cost. Now, I know that other professionals are not being so encumbered. And I am not, by this comment, seeking to limit what the examiner would do or should do. I'm simply stating that as to this additional layer of administrative expense, because it involves an investigation that is at some level being duplicated -- at some level being duplicated within the SIPA case, that there needs to be an attempt to carve out what truly needs to be done above and

beyond what has already been done by Alvarez & Marsal, which has been partly reported on this morning, and above and beyond what will be done by Mr. Giddens in his capacity as SIPA trustee.

Accordingly, I would be interested in comments by those affected, as to whether or not such a budgeting process is reviewed as acceptable or unacceptable. And if so, why.

Finally, I think it appropriate that there be what I'll call a meet and confer session. And I'm not designing it on the fly at this moment, but I'm simply describing my general views of what it might consist of, that would include the debtor, the committee, the New York State controller, the Office of the United States Trustee, to the extent that office deems it appropriate, Mr. Giddens, and those parties that have joined in the pending motions for appointment of a trustee, and of course, the Walt Disney Company as the original proposer of this concept.

For purposes of drawing up a plan that is designed to minimize interference, avoid costs, and maximize efficiency, the purpose of this meet and confer session would be to develop, not so much in the context of the examiner motion, but rather in the context of the multiple parallel paths of investigation that are currently being let loose within the case. What I'm going to call a master plan. We'll call it the Peck Master Plan. That last comment was intended to be a joke

and it did produce its intended result, which was a little laughter. A master plan that would provide for coordination without limitation. The goal would be that each group that is charged, or believes itself to be charged with the responsibility to investigate, to be able to reasonably rely upon work product generated by others. Not terribly different from what an expert witness would do in relying on the work product of others working for that expert.

The goal, as I view it, of the examiner motion, is to not merely fulfill a statutory duty, but because we need to fulfill a statutory duty, to advance the overall interests of the case as a whole and those parties in interest who are looking to this case. And so what I want to accomplish here is not something which merely gets the job done, but something that gets an A plus. I want to see the talent surrounding me in this courtroom work together with the goal to make the examiner process one that is truly value added, not cost accumulated.

Those are my observations. And I wanted to lay them out before everybody else had a chance to step in because everybody needs to know what I've been thinking about. And I'd like anybody who wishes to to feel complete freedom to take a shot at what I have said.

MR. MILLER: Your Honor, I apologize, I was remiss, but as we pointed out in our response, we did point out the

overlapping investigations. The investigation which Mr. Giddens intends to pursue, the investigation that the creditors' committee has been pursuing under its Rule 2004 motions, and even the investigations that governmental authorities have been pursuing. And that was why we made the suggestion about holding off on professionals. But I find it to be in my best interest to agree with the Court whenever the Court has observations. So in that context, Your Honor, I would just ask a question that the meet and confer, is that pre-appointment or post-appointment?

THE COURT: I was thinking post-appointment because if it happens pre-appointment, we're missing the benefit of what the examiner and the examiner's professionals may wish to bring to the table.

MR. MILLER: Well, in that context, Your Honor, we agree with everything that Your Honor has said. We think there should be a protocol, to use that expression. We did confer with the creditors' committee on its suggestions about a work plan, etcetera. And we did not disagree with what was put in by the creditors' committee. But there are other differences with other parties with the creditors' committee's proposals. The question that I would have, Your Honor, on the appointment, the description of the examiner's duties, I'm a little confused about. How would they be expressed in the order, or they would be subject to the meet and confer?

THE COURT: I'm actually looking for guidance from the parties as to the scope of the engagement of the examiner initially. And the scope of the engagement of the examiner would not be subject to the meet and confer. The meet and confer that I described was really designed to avoid dissonance as among the various parties who are engaged in what be competing efforts to obtain information as opposed to collaborative efforts to obtain information.

So I'm still looking for guidance from all parties concerned as to the proper scope. To the extent that there is an agreement concerning the proper scope, as I said in November, that's helpful. That doesn't necessarily mean that I will rubber stamp it, but I will certainly take it into consideration. The fact that different parties in this case are able to agree as to an appropriate scope is certainly persuasive but not necessarily determinative.

MR. MILLER: Yes, sir. In that context, Your Honor, and subject to whatever provisions there may be in terms of a development of a work plan and setting a date for reporting and all of those things which the estate has not objection to, I would suggest, Your Honor, that in looking at what the debtors have proposed at page 20 of its response to the New York State controller's motion, the elements which relate to the Disney Company, I don't think anybody has raised any objection with those, which basically relate to an investigation, if you will

call it that, as to whether Lehman Brothers Commercial Corporation has any administrative claims against LBHI resulting from LBHI cash sweeps of LBCC cash balances, if any, after the filing date. I don't think that should be a very complicated matter. "An investigation of all voluntary and involuntary transfers to and transactions with affiliates, insiders and creditors of LBCC or its affiliates in respect of foreign exchange transactions." These are all very centered on the relationship between the Disney Company and LBCC. So I'm just going to skip over those because they're all very --

THE COURT: Everything that's Disney-specific is part of the engagement.

MR. MILLER: Right. Then, Your Honor, we went on to "whether there are more than colorable claims for fiduciary duties and/or aiding or abetting any such breaches against the officers and directors of LBCC and/or other debtors arising in connection with the financial distress of the Lehman enterprise prior to the commencement of the LBHI Chapter 11 case on September 15." That may conflict, Your Honor, with the committee's suggestion that all the examiner should do is make a factual investigation and report facts and not evaluate claims. So that's one issue that will be brought up before Your Honor. "Whether the assets of LBCC or other direct and indirect subsidiaries of LBHI were transferred to Barclays Capital, Inc. as a result of the sale to Barclays Capital, Inc.

that was approved by order of the bankruptcy court dated September 20" -- it's actually the 19th, Your Honor -- "2008 and whether consequences --

THE COURT: It actually was September 20.

MR. MILLER: It was but the order's actually dated the 19th, Your Honor. It was entered on the 20th.

THE COURT: It was entered on the 20th. It's a typo if it says the 19th. I remember that very well.

MR. MILLER: A long night and a long morning. "And whether consequences to LBCC of the consummation of the transaction created more than colorable causes of action that inure to the benefit of its creditors." That again is contra to the committee's suggestion of a factual investigation, a factual report. "The inter-company accounts and transfers among LBHI and its direct and indirect subsidiaries, including but not limited to LBI, LBIE, Lehman Brothers Special Finance and LBCC during the thirty day period preceding the commencement of the LBHI Chapter 11 case on September 15, 2008."

And as I said before, Your Honor, we would amend that to the thirty days prior to the commencement of any of the debtor cases. Because some of them commenced on October 3 or thereabouts. The transactions and transfers, including but not limited to the pledging or granting of collateral security interests among the debtors and the pre-Chapter 11 lenders

and/or financial participants, including but not limited to JPMorgan Chase, Citigroup, Inc., Bank of America, the Federal Reserve Bank of New York, and others. The transfer of the capital stock of certain subsidiaries of LBI, Lehman Brothers, Inc., on or about September 19 of 2008 to Lehman Ali, Inc. The events that occurred from September 4 through September 15, 2008 that may have resulted in the commencement of the LBHI Chapter 11 case." These were a distillation, Your Honor, of questions that were constantly being propounded to Mr. Marsal, to his representatives, that we thought should be within the general scope. And they're broad enough so that the examiner has flexibility within each one of those.

Then, Your Honor, we added in paragraph 32 suggestions which were made by the Office of the United States Trustee and also a suggestion which was made by the United States attorney for the Southern District of New York. These are basically provisions directing the examiner and the other -- not the examiner, Your Honor, the other professionals and fiduciaries in this estate to cooperate with the examiner in conjunction with the performance of the examiner's duties. And that until the examiner has filed his or her report, neither the examiner nor the examiner's representatives or agents shall make any public disclosures concerning the performance of the investigation or the examiner's duties. And "the examiner" -- we propose this, Your Honor -- "may retain counsel and any

professionals if he or she determines that such a retention is necessary to discharge his duties in connection with his or her appointment." As modified by Your Honor's suggestions, we would accept that.

"The examiner and any professionals retained by the examiner would be subject to the provisions of the Bankruptcy Code and compensation under Section 330. And the examiner should have fully cooperated with any governmental agencies (such cooperation shall not be deemed a public disclosure as referenced above) including but not limited to any federal, state or local government agency that currently or in the future may be investigating the debtors, their management or their financial condition. And the examiner shall use best efforts to coordinate with such agencies in order to avoid unnecessary interference with or duplication of any investigations conducted by such agencies." Which is a theme that Your Honor has expressed. "The examiner will follow a protocol to be established with the governmental agencies for the sharing of information to the extent that such sharing benefits the debtors' estates and such sharing of information shall be subject to appropriate conditions to protect the debtors' estates."

And finally, Your Honor, "The examiner shall have a standing of a party in interest with respect to matters that are within the scope of the investigation and shall be entitled

to appear and be heard at any and all hearings in these cases." And then, Your Honor, we suggested that every effort be made to avoid duplication. We would incorporate, within those suggestions, Your Honor, most of the suggestions of the creditors' committee.

We think that covers a huge waterfront. And if somebody wants to put in the words investigation into fraud, gross incompetence, etcetera, those, Your Honor, are not objectionable to us either. We just think that it wasn't necessary at this stage of the process. So our suggestions are set forth, Your Honor.

We agree with the concept of meet and confer. We think that's a very good process and we also, Your Honor, we endorse and we support the concept that the professionals engaged by the examiner should be in the context of counsel to the examiner in terms of interpreting what has happened to date, interpreting the information that is being given, and then if there's a desire to go further, then there's always leave to come back before this Court. Thank you, Your Honor.

THE COURT: All right. Thank you. It seems to me that it makes sense now for those parties, including the Walt Disney Corporation, that started this process, which seems like a long time ago, to comment on what Mr. Miller has said, what I have said and whether or not there is agreement or disagreement concerning both scope, as proposed, and conditions attached to

the engagement as proposed.

So I'll hear from Mr. Bienenstock and then from other parties in interest who have either joined in the Walt Disney motion, or like the New York State controller, filed an independent motion for appointment of a trustee which has been modified in a recent pleading which withdrew that aspect of the request, or any other party, like the creditors' committee, that has weighed in with responsive papers in connection with the pending examiner motion. Everyone else is free to listen.

MR. BIENENSTOCK: Thank you, Your Honor. Martin Bienenstock of Dewey & LeBoeuf for the Walt Disney Corporation. As Your Honor knows, we commenced this by a motion dated October 20, 2008. The relief we requested, being a creditor of LBHI and LBCC, Lehman Brothers Commercial Corporation, we requested an examiner or examiners to investigate issues relevant to those two entities within the context of Section 1106 of the Bankruptcy Code which sets the broad scope of -- I should point out the examiner's duty. And that's the first comment I wanted to make. The examiner has a duty under the Code. And I don't think many of the requests to limit the examination would have the examiner do less than his duty. Now, that said, we recognize the Court has the discretion to approve an investigation but we submit even the Court would not properly exercise its discretion if it prevented the examiner from conducting the investigation set forth in Section 1106 as

his or her duty to do so.

Your Honor, we appreciate -- Your Honor invited us to take shots, at least in our case, we didn't find very much in Your Honor's comments to take shots. But I would direct Your Honor's recollection to perhaps one thing the Court said that you might not even remember saying or the way you said it, but Your Honor said in this case, Your Honor -- and I know Your Honor knows this, there are fifteen debtor cases. We are very much opposed to what I would call a stealth consolidation. These are fifteen cases. Many of them, in their own rights, would be among the largest ever filed in the United States. And there are different creditors of different entities, which is a large reason why we're here. There's some overlap, there's some lack of overlap.

There are issues that Mr. Marsal referred to this morning that he labeled as very controversial on the inter-debtor claim issues. And we ask the Court in the strongest possible terms, not to lose track of the notion that this should not be a stealth consolidation. There are creditors of different estates that need to find out facts for those estates because it directly impacts their claims. And I know Your Honor certainly did not intentionally mean to suggest that there should be any type of stealth consolidation or otherwise. But there is this danger in these jointly administered cases, one committee, etcetera, etcetera, that things get done that

really are not in the interest, necessarily, of the creditors of a particular debtors' debtor.

As a for instance, and then I'll move on to Your Honor's questions, there was an application for a bonus formula for the Alvarez & Marsal firm which we had no problem with. And we didn't weigh into that. But if that motion is read carefully, it compensates based on the gross amount produced for creditors in all of these fifteen debtor cases. Well, it could be that one debtors' estate really gets shortchanged and its creditors are hurting. And yet that has no impact. It's just the gross amount. That's what I mean by this danger of stealth consolidation. Things get done even unintentionally that actually prejudice the rights of creditors of individual estates.

Now, in respect of the debtors' response this morning, Your Honor, we just take issue with one thing Mr. Miller said. He said Disney, in its reply, accused the debtor of bad faith. Your Honor, I immediately reviewed our pleading because that wasn't in our heads and that wasn't what we remembered writing. And the only thing we say about the debtor that I can find is that we think its recommendation that the examiner not retain a financial advisor, at least initially, is inappropriate. I just wanted to correct the record on that.

And we agree with Your Honor wholeheartedly, so I won't spend much time, that the examiner needs the financial

advisor at the outset. And the reason it does is that you have to know what questions to ask Mr. Marsal. You can't make sense of the data or know how to go behind it or know whether something should be reviewed unless you have financial expertise at your side.

As an overarching comment, Your Honor, based on logic and I hope experience, we want to urge this on the Court. It's much harder to negotiate and script a protocol than it is to have one when people are trying to do the right things. Specifically, by that I mean the following. We have every faith the United States Trustee is going to propose and this Court will approve an examiner candidate who's going to go forward in good faith to be the value added, do the A plus job Your Honor wants to see. It's inconceivable to me that any professional in that position would not first try to benefit from Mr. Marsal's work product and the committee's work product, to the extent the committee is willing to share it. And then determine what needs to be perhaps verified, confirmed, checked. Lots of assumptions are made in accounting entries. Some assumptions will benefit some debtors' estates, some will prejudice debtors. So you have to make a judgment as to whether to go behind it.

There's no question in my mind that if two or more of the fiduciaries want to depose the same witness, whether it be at Barclays, at one of the banks or anyone else, and they'll of

course want to have document production in advance of a deposition. They shouldn't each serve separate document requests and deposition notices. They should coordinate and work together. These are the types of things that if they don't happen I think they can be brought to the Court and simply the knowledge that they can be brought to the Court will cause the parties to cooperate.

It's hard to script all of this, but among people trying to do the right thing, it happens. So we very much hope that whenever the Court deems appropriate, hopefully as soon as possible, today or in the next several days, the examiner will be appointed without the need to try to negotiate or craft lots of procedures and protocols. And let's just have a broad mandate to the examiner and the other fiduciaries that they all have to get together to cooperate. And we think that's the most efficient way to achieve the Court's goal.

Now, on the specific questions. The first, as to the SIPA trustee, we're not asking for an examiner for the SIPA trustee's estates. It may well be that the examiner for LBHI and LBCC needs to investigate facts relating to those estates or transactions with them, etcetera. And that's certainly both with the examiner's duty under 1106 and it would be inappropriate to limit the examiner. But as we say in our reply, we're not trying to have an examiner for those estates. We recognize the SIPA trustee is there and is conducting his

own investigation.

THE COURT: Mr. Bienenstock, let me ask you a question. Is it your position, and this goes back to your colorful reference to so-called stealth consolidation, that there should be a separate examiner appointed in the LBCC case, or is it your position that the same examiner appointed in the LBHI case, with a mandate to examine the circumstances surrounding LBCC, will be capable of doing both?

MR. BIENENSTOCK: Your Honor, if I were to say there should be separate examiners, then the next question would be well, then do I need fifteen examiners mandatory under the statute, I think. I don't want to put words in the Court's mouth. And I think the prospect of fifteen examiners would very quickly lead to one examiner. So without taking a position on what the statute requires, suffice it to say for now, if there's one examiner, and I suspect this is going to go beyond LBCC, just I could only ask for an examiner where my client is a creditor and my client could only ask where it's a creditor. I expect there's going to be one examiner who will understand that he or she is not an advocate of any one estate but is simply an agnostic, unbiased fiduciary to find the facts in good faith, as best as he or she is capable of. So let me put it this way, Disney Company will not object if there's one examiner for the two estates we've asked.

THE COURT: Provided, however, that we incorporate

into that appointment the comment that you made that just because there's a single examiner it should not be deemed to be an indication that there's anything approaching consolidation by virtue of the fact that that examiner may be looking at multiple estates because he or she will be agnostic.

MR. BIENENSTOCK: That's right. That's right.

THE COURT: Fine.

MR. MILLER: Just to correct the record, Your Honor, there are nineteen different ones.

MR. BIENENSTOCK: Sorry. Thank you. I took it from the Marsal report. He listed eight then said seven others. But I guess there are four more.

THE COURT: Well, there are two that have been filed within the last week or so.

MR. BIENENSTOCK: Okay. In respect of these fiduciaries we've been talking about, I also want to caution the Court, and I won't belabor it because I think we did mention it in our reply, that a fiduciary is a nice, good-sounding term, but one has to go behind it. The statutory committee is a fiduciary. As we point out, it was appointed after the first, I think, debtors' cases were filed. It has members on it, indentured trustees who are created solely by contract, who can only do what their contract says they can do which is support the creditors they represent, who are bondholders of LBHI. To say that the committee, as it exists

now, is a fiduciary for all the debtors' creditors, we submit would be completely wrong, both legally and factually. We also do not believe that that particular situation can be corrected by changing the membership because then you get into the Adelphia issue, which we cited in our reply, which is where you had, just like here, one committee for all debtors, if that's what we end up with. Judge Gerber ordered and wrote a lengthy decision explaining why he had to tell the debtors' management and the committee basically not to take positions on the inter-debtor issues. And it was left to ad hoc committees of creditors, which had its own set of issues. But it was what it was.

So we don't think by saying this committee is a fiduciary that that means that in Disney's case LBCC's claims are going to be found with any objectivity or zealous advocacy because they have people on the committee who have opposed them as a matter of law. And they weren't even created to be a committee for LBCC. So we think the notion that there is a committee and it's conducting an investigation is factually true. We don't think legally it in any way should impinge on what the examiner does.

Now, I said earlier, of course there should be the cooperation, which I think would get to the result the Court was looking for. But let there be no mistake, we certainly contend that this committee is not acting as a fiduciary for

LBCC and cannot do it and it has no requirement to make any report public. It doesn't satisfy any of the fairness and appearance of fairness objectives of Congress in having the examiner statute.

And although it shouldn't even be necessary to say, because I think it's obvious, but I'll say it nevertheless, the fact that the committee came first and the examiner comes second doesn't mean that the examiner should in any way be subordinated to the committee. And the committee's retort that it can sue and the examiner can't, there are two problems with that, as we point out. Judge Gerber found in Adelphia, no, the committee can't sue because how can you sue when you're a fiduciary for both sides you're suing on, on inter-debtor disputes. And second, Congress wrote the statute and obviously didn't think that because a committee can sometimes get derivative standing to sue that the examiner should have a lesser investigation. So we think --

THE COURT: One second. Let me just understand what you're saying. Is this argument you're now making an argument suggesting that it would be inappropriate to limit the employment of the examiner to simply the investigation of facts, but that it should extend as well to claims. Or are you making a different argument?

MR. BIENENSTOCK: I was definitely setting up the predicate for that. And we attack that on several grounds.

The first ground is what I just said, that because of the composition of the committee, the timing of its appointment, etcetera, the Adelphia decision, its investigation, whatever that is, and we don't know because by right it's secret except to the extent they want to tell people about it or except to the extent you see them file pleadings and subpoenas and things. That can't substitute for an examiner investigation.

Additionally, the notion that the examiner should be censored in advance and told no matter what you find don't purport to write a report disclosing claims you find of different entities, we think, number one, is tantamount to negating the mandatory aspect of the statute. This should not be conceptualized. If you have to have an examiner, so all Congress meant was you have to have a person. But you can basically take it all back by censoring her or him in advance.

THE COURT: It's known as a derivative.

MR. BIENENSTOCK: Thank you, Your Honor. For the committee to say you can have an examiner but shouldn't write claims is just -- whatever you want to call it, it's taking back what Congress mandated and it would be wrong. And one has to ask what would be so bad about an examiner who identifies claims for the different estates. Why do they want to keep that under the rug? This is the person who's agnostic, who, if you're going to have faith in a report, this is the report that's coming from someone who's not an advocate for any

particular estate or creditor.

THE COURT: That's not how I interpreted the committee's papers. And I'm not taking away from anything that you're saying in your present argument. I viewed, and I'll hear from the committee on this, this argument not to be geared to limitation of mandate, although that's certainly what they're saying, as much as it is concern to protect the record with respect to legal interpretations to be made from agreed facts. And I suspect, but don't know, that the concern was that the examiner report not become a blueprint for use against an estate representative with authority that might otherwise be able to articulate a cognizable claim based on those facts. That's how I interpreted what I read. The committee will comment as to what they actually meant.

MR. BIENENSTOCK: Well, I would say assuming the committee meant what Your Honor infers, or not, the examiner, in conducting an investigation, should definitely be free to report what claims it and its professionals believe arise out of that investigation. It's one of the --

THE COURT: And so there's no mistake as to my thinking on this, and I'll give the committee a full opportunity to be heard on it, my inclination is to give the examiner complete freedom to write a report that extends both to facts and to identified causes of action, if any, that might be implied by those facts with the understanding that that's

the view of one individual and one individual's law firm and is not binding upon any other party.

MR. BIENENSTOCK: Okay. And we agree with that. So I'll move on to the next issue. As Your Honor's four points, the scope and the reasons for the scope, as I mentioned at the outset, I think the primary scope is governed by the examiner duty to do the investigation, which I think is set forth in 1106(a)(3) and (4), but it's set forth in the Code. We think that the scope that the debtor has proposed, which includes what we agreed with the debtor on and then apparently they had other discussion to their own ideas and they added a bunch of things, is completely appropriate.

I just want to correct the record on one item. While Disney clearly has its claim and its issues, if one looks at the scope, there's nothing Disney-specific. There are things specific to Lehman Brothers Commercial Corp. We think all creditors of Lehman Brothers Commercial Corp. will want to know what is claims are against LBHI. But we didn't get into any of the Disney-specific issues with -- that the money is now at Citibank or Barc -- or anything like that. Everything in that scope has a benefit to every creditor of LBCC or LBHI, depending on how it comes out. And we were very careful not to make it Disney-specific.

So the only guidance I can offer, Your Honor, is what we wrote down is definitely within the scope and the statute in

the examiner's duty. And we're heartened by the debtors' statement this morning that if the examiner comes back to expand, the debtors will support that. We think that's a very rational way to go forward.

We've covered the examiner's ability to retain professionals, which was your second point. The third point was a deep concern for the overall costs and expenses and the Court not wanting the case to be a blank check for professionals. As we pointed out, and Your Honor alluded to, this case, which is the largest ever, has probably the fewest professionals, certainly per claim dollar and perhaps per estate value dollar, of almost any case. And that's not an excuse just to spend money because it may be very efficient as it's currently structured.

But while on the one hand, no one wants to spend unnecessary money, and we're in the forefront of that. I mean, Disney is going to have a claim here that's going to get whatever the distribution is. So we certainly don't want to incur expenses that will reduce our distribution. But we do think that it's one thing to be efficient, it's another thing to create rules that effectively prevent the carrying out of the statute or the professional's duties who are going to be retained. And so we don't think that saving money is an excuse to limit an examiner's scope or the number of professionals the examiner can retain. Saving money is an excuse to do what we

suggested, which is to require cooperation so they don't unnecessarily duplicate.

And I want to emphasize that reviewing something Mr. Marsal or the committee has done is not, per se, unnecessary duplication, if they have a reason for wanting to go behind it. And we have to rely on the professionals, in good faith, to determine whether the underpinnings of the claims they come up with, etcetera, should be reviewed or not. And presumably, some will be and some won't be.

Your Honor made a comment about the -- well, Your Honor thought there should be a financial advisor at the outset that Your Honor thought that it should -- not to duplicate, should be there for intelligence, good judgment and to be interpretive, if I got that right. We agree with all that, but I don't think, and I hope Your Honor did not mean to suggest, that the examiner's financial advisor cannot also ask for the underlying source documents, the work papers to look at it. He may want to look at it on a spot basis to see if it was done, to see what type of judgments were done. We have to rely on the good faith and professionalism of these people to know when they need to roll up their sleeves and go to the source documents. And I hope the Court's comments did not mean to preclude checking out certain key facts or conclusions, etcetera, that the examiner's professional's financial advisor thinks is appropriate.

THE COURT: I will interject to confirm that that was not the intention of those remarks. It was rather to suggest that the financial advisor chosen by the examiner should be sensitive to the fact that, at significant expense to the estate, a job has already been done and that it would be unwise to duplicate that effort. That doesn't mean to suggest that the financial advisor, after asking questions, wouldn't perhaps, if appropriate, investigate more deeply into particular issues of concern.

MR. BIENENSTOCK: Okay. Your Honor's fourth point was the meet and confer, which I actually, in substance, started out with. We wholeheartedly agree that that's the way to get cooperation rather than trying to negotiate a protocol in advance.

The only other point I want to make, I think I responded to the committee's objections or requests to lessen the scope. We likened it to an examiner with reduced powers as opposed to one with expanded ones. Barclays objects to the scope, essentially saying that it got a sale free and clear and shouldn't be bothered. And our point -- or really two points. Number one, at that sale hearing, it knew there were open issues. Your Honor raised the issues because nondebtors were, let's just say, in the neighborhood, and we were concerned about their assets. At warp speed, which Barclays required this deal to be done --

THE COURT: It wasn't that Barclays required it to be done at warp speed, the transaction itself, by its very nature, mandated that it be done at warp speed.

MR. BIENENSTOCK: Okay.

THE COURT: So I don't think it's fair to tag that particular disability on Barclays. It was just the nature of the melting ice cube.

MR. BIENENSTOCK: Fair enough. They did it with eyes open. They heard all the open issues at the hearing. They heard Your Honor say that there were certain ambiguous things that would have to be dealt with later perhaps. With all that on the record, it would completely unfair and inappropriate for the examiner not to develop the facts to see whether those ambiguities will in fact make a difference and whether creditors do have rights. And this is all creditors of subsidiaries who might have been impacted by the sale, whether they do have rights that should be pursued.

Thank you, Your Honor.

THE COURT: Mr. Bienenstock, thank you very much.

MS. ADAMS: Good afternoon, Your Honor. Diana Adams, United States Trustee. I'm speaking now, I think, because I might be able to address some issues that will help guide further responses and also perhaps to set -- I'll say minds at rest that some of these issues have been discussed. And my office is well aware of the concern about coordination and

cost.

Your Honor referred to the telephone conference call we had last week. And at that time I told the Court as well as the parties that my office had begun to solicit recommendations and would begin interviewing. And I have been interviewing possible candidates on Monday and Tuesday of this week and I can tell the Court and the parties that virtually everyone, if not everyone, in a general description without knowing the exact scope of course, but having read the pleadings, said that one of their first tasks would be to sit down with the debtors, the creditors' committee, the SIPA trustee, the other parties in interest, the U.K. representatives, and begin discussions for coordination for nonduplication. That is everyone is aware of that, Your Honor. I think that probably will lead to some protocols. I certainly hope so.

The other issue that all of them addressed was the need to have financial advisors. Everyone spoke highly of Alvarez & Marsal, immediately said that they had no problem relying on the information that they would have gathered, would not seek to duplicate it, but they would need to have their own financial advisors to vet -- I think the word was used by several of the people -- to vet, as Mr. Bienenstock pointed out, perhaps on a spot basis or other individual areas of concern. One applicant actually went so far as to say that if he could not hire his own financial advisors he would not take

the assignment. They all felt strongly that it was important for them to have their own professionals.

As for the scope, what Mr. Miller has, the debtor has in its pleadings, my office had not problem with. We had only wanted a catch-all phrase which I think the Court has referred to and Mr. Miller actually has stated that if the examiner finds that there's additional area, come back to the Court. I think the protocols that Your Honor has talked about are best worked out by the examiner and the other parties you mentioned.

I think the meet and confer is absolutely necessary. I also take to heart, and I know we will make sure the examiner does as well and I hope the other parties do too, Your Honor's comment that the examination should be value added and A plus. And I make this comment with another case in mind, that I'm sure most of the professionals, if not all of them, are fully aware of where my office appointed an examiner and the protocol process took over four months.

And I think with the comments that Your Honor has made that there should be a cooperative meeting to enhance and not impede the examiner, is very, very important. And I don't anticipate that that will happen but it was certainly a grave concern and delay in a previous case. So my office fully adopts all of Your Honor's recommendations, not surprisingly. And I think that any concerns that the committee has, or any other party in interest, about what should be in the report can

be handled in the meet and confer or as the report is developed and need not be determined at this point. Thank you, Your Honor.

THE COURT: Thank you very much. Mr. Sabin, good afternoon.

MR. SABIN: Good afternoon, Your Honor. Jeffrey Sabin from Bingham McCutchen on behalf of the Harbinger Funds who, unlike the Disney entity that brought this motion, did join in this motion. At that time Harbinger had disclosed its creditor status or asserted creditor status of LBSF, which is a debtor, one of the nineteen, its creditor status or asserted status of LBHI and it is also, in its most recent pleadings, and I'm going to follow your lead and deal with several other pleadings in this case that we have responded to in the context of answering your questions, it has creditor status at LBIE. And it will soon file a proof of claim at LBI.

In that context, Your Honor, I want to respond generally and then specifically. As to a general matter, you may recall that Harbinger was probably the first to ask for transparency in this case. It continues to do so and continues to think that this examiner scope, duties, and the matters related thereto should be seen in the context of continued need for transparency.

Number two, the need for timing for that transparency, especially when viewed in connection with the

concerns of cost. And third, the need for coordination and cooperation, not only between the examiner, in this case, but the SIPA trustee in connection with his examination, which otherwise is before this Court by virtue of its 2004 motion, to do his duties under the SIPA statute. And by virtue of the 2004 examination already ongoing by the official creditors' committee at LBHI and the other initial debtors in connection with questions related to the clearinghouse banks.

In that matter, Your Honor, we find ourselves -- to respond to question number one on scope, to also include duties. As we read the statute and as we read the debtors' proposal, and in particular I'm referring to Section 31 of their response, in essence, to the trustee motion, and on page 21 where they ask for, as part of the scope, investigation of various claims of breach of fiduciary duty. In order to have that scope, I think that it is needed, and our client does believe that while we are not asking for this examiner to have standing to bring any actions, I think in the context of transparency, not only is it important for the examiner to develop facts within the scope, but we think the examiner needs to be free to at least talk about its view without binding anyone else who may or may not have standing to bring claims about claims that may arise in connection with that examination.

As to scope itself, Your Honor, we have some limited

suggested comments because we find ourselves in almost complete agreement with Mr. Miller and the debtors as set forth in Sections 31 through 34. As to the first bullet point in paragraph 31, we do not believe it should be limited to what otherwise Mr. Miller said what should be an easy issue. Right now it's limited to "Whether Lehman Brothers Commercial Corp. may have administrative claims against LBHI in connection with cash sweeps, cash balances after September 15th." We think that should be expanded to deal with the same issue as to any other subsidiary that is currently a debtor in these U.S. proceedings or could be a debtor in the future in these U.S. proceedings.

Second point, Your Honor, is in that same paragraph. It is the third bullet point on page 21. "We are not clear by the proposal of what is meant by whether there are more than colorable claims for breach of fiduciary duties." I think the issue is whether there are claims, whether they're colorable or not should be free to be discussed, as we suggest. And I think, as I heard, Mr. Miller and the debtors are not opposed to expanding that. I don't think there's a need to include every litigationable claim, whether it's fraud or otherwise. But I think limiting just to breach of fiduciary duty would be inappropriate, and I would suggest that it simply be breach of fiduciary duty or other state law claims or similar claims would be within the scope.

As to paragraph 32 which is not necessarily within scope, but it's more within process, I will answer your questions as to process as part of our coordination. We do believe, as the committee indicated, that there should be a work plan. And as part of transparency we believe that work plan should be disclosed as soon as possible so the world knows what's the work plan and what's the timing. We understand, in connection with the second bullet point on paragraph 32, that until there's a filing of the report by the examiner that there would be no public disclosures regarding performance of the investigation. However, it would not be fair for me to stand here, in connection with the examiner motion and not also address our response to the SIPA trustee's request in connection with its investigation which was otherwise filed by the SIPA trustee as a 2004 request and issue of subpoenas.

THE COURT: Well, I heard you say it would not be fair for you to not discuss it. I'm questioning whether it would be fair for you to discuss it in light of where we are in the agenda.

MR. SABIN: My only issue, Your Honor, is whether the parties in interest in the context of 2004s will have an ability, as part of whether it's the examiner's motion or the SIPA trustee's examination to participate to the extent there is or is not a signing of a confidentiality agreement or otherwise. That's the only reason I raise it.

THE COURT: I understand that point. But in no way will the order relating to the appointment of the examiner control the outcome of that point. So I think we can put it to one side, reserve it for a later discussion this afternoon.

MR. SABIN: Done. As to the use of Alvarez & Marsal, I fully concur with this Court and with Mr. Bienenstock's and this Court's additional modification, if you will, or amplification of what this Court meant. I fully adopt that. Fully adopt the -- and would participate in the meet and confer.

And lastly, Your Honor, I think that timing, which has not been raised, but timing, in effect, has been raised by the cost concerns and the work plan. I think timing is critical here. And if there were a way, if necessary, so that certain aspects of the report were ready sooner rather than later and were independent that that work plan itself permitted that kind of flexibility so that if there is aspects of the report, if they were ready, could be revealed as opposed to waiting to the conclusion of all of that. Thank you, Your Honor.

THE COURT: Thank you, Mr. Sabin. They're coming at me from the left. They're coming at me from the right.

MR. ENTWISTLE: Oh, I know, Your Honor. There were lots of reserved seats in here this morning. So finding a seat was at a premium even coming in a half an hour early. Andrew

Entwistle of Entwistle & Cappucci for comptroller, DiNapoli. I appreciate the opportunity to talk to Your Honor and I'm going to try to focus as much on your questions directly as possible. That was our intent anyway following the conference call the other day.

It may be easier to start with the last point you made regarding the meet and confer. That's the easy one, I think. I think that makes terrific sense. I think appropriately, as has been observed, it should happen after the appointment of the examiner. I'm sure that was your intent from the beginning. We're ready, willing and able to participate in that process. And I'd observe that the types of protocols that would be at issue there are done in lots of different contexts and lots of different cases outside of bankruptcy as well. And I think we can bring a lot of value to that process. So we appreciate that.

The third point -- the third issue regarding the work plan which kind of came out of this issue of cost and balance, we're obviously very sensitive to the costs. The comptroller's interests here are kind of at the back of the line. We recognize that. We're very oriented toward maximizing the value of this estate and achieving transparency at all levels. We think a work plan is a good part of the process but not in the way the committee had suggested it. Not one that would have to receive preliminary approval by the committee, by

debtors, by others but rather in the form of a report to the Court. In other words, there should be an initial scope, which we'll talk to in a second. But once that scope is set, the examiner should have to come to Court and then let the Court know its intended course of work, what it intends to do to carry out or to act in accordance with its statutory obligation under 1106 and 1104 and then take that forward. So I think a work plan makes sense. It is a good way of assuring that whatever protocols are agreed to in the meet and confer are actually being undertaken in real life. But I think that, again, it should be by way of a report and not something that needs approval by any participant in the process or party in interest before it comes to the Court.

In that regard, I think in terms of transparency and something Mr. Sabin said, you know, provoke this thought, it might be worthwhile that while we do have provisions, and we have no issue with the provisions that talk about the examiner not disclosing or having parties disclose information about the investigation, etcetera, before it's time, that if we're going to have a work plan, it may make sense and benefit everyone concerned that there be periodic status reports, maybe along the lines of what was done in Enron or in other cases, so that this way the Court's aware of the progress being made in implementing the work plan and so are all the rest of the parties in interest. I think that benefits transparency and

helps advance the process.

With regard to retaining professionals, I think that's been spoken to a lot. Our major concern there, Your Honor, is really that the trustee not have to view the world to the prism of Alvarez & Marsal. Mr. Marsal's presentation today was excellent. It really is the first opportunity that we've had to see the progress that's being made. I think it was a terrific way to start. And it is, as you observed, one of the main reasons why the comptroller has deferred the trustee application at this point. It's clear that Mr. Marsal has made progress as the CEO here and that we are getting some order to this process of unwinding the affairs of the estate. We still have concerns, as we observed in our motion, with regard to the presence of the remaining board members overseeing the process. But I think we can table that discussion appropriately for another day.

It does, however, I think, speak to two issues. One, I think it's clear that the ability to retain professionals, I think, as you observed, one, we can deal with the issue of deference in these protocols that we're talking about and even in the context of the work plan, speak to the issue of looking first to materials by Alvarez & Marsal or other investigations. If the committee wants to provide materials to that process, certainly, that's welcome and I think that should be part of this work plan process and the meet and confer. And I think we

can easily establish a protocol for that information being made available to the examiner.

But I think Mr. Bienenstock's point was well made. And that is that those professionals shouldn't be limited from being able to go beyond what's provided. They can look at it but they should be able to go beyond in a way that's not duplicative and consistent with your views.

With regard to scope, which is the overarching issue, I thought I heard Mr. Miller say that he didn't have an objection to including what, in essence, we have been purporting all along which is the statutory language regarding looking at issues of fraud or misconduct, etcetera, in addition to the breach of fiduciary duty provisions that they had included in paragraph 31, bullet point 5, of their suggestion. So if we have -- I think it's important, especially if we're talking about work plan and context, that we do have a broad scope in the sense of looking at the -- carrying out the statutory mandate along the lines of what the comptroller has suggested at the third ordered paragraph of its proposed order and in -- at the same time, in paragraph 5 of its submission in reply. And that is, to assure that the examiner has the authority and power to investigate all allegations of pre-imposed petition fraud, dishonesty, incompetence, etcetera, in particular, in the context of, among other things, mortgage origination, mortgage-backed securities, credit default swaps

and the like -- and through the period, through 2004. And we've set forth in our pleadings some of the reasons why we think that the examiner should have the ability to look back through that period.

I think it's important, again, consistent with submitting a work plan that we not, in essence, have this same proceeding all over again once the examiner is appointed. I think we run the risk if the scope is too narrow and just really a series of questions to be answered that an examiner when appointed will be forced to come back to the Court very quickly. And while I take heart with the notion that the debtor as it's represented today will be supportive of whatever the examiner wants to do, I think that's really judicially inefficient. I think we're much better off having a scope along the lines of what we've suggested. And if it's, as I understood Mr. Miller to say, he's fine with having that statutory language imported into the order, an appropriate place to do it is that paragraph that we've just spoken about, paragraph 31, bullet 4. And if we import the language we have there, we have no objection.

And then I think we're all pretty much in agreement about scope other than possibly the committee. But then I think within that scope, the Court then receives this report of a work plan and we all move forward with the examination. I think we assure all the things we're looking for here:

transparency, independence, and we assure no bias but, again, a very cost-effective and judicially effective approach because my concern really mirrors Your Honor's. And that is that this examiner's report is something that benefits everyone in all of the various estates that are at issue here. I think one examiner is appropriate, obviously, to answer the Court's question about that earlier. But I think we save a lot of time, energy and effort if the work plan, the overall scope provides a framework, if you will, where all of the parties in interest who might otherwise be running to court to seek independent discovery can have comfort that this examiner is going to bring into the light much of that information that they would look for in the ordinary course. And once that's done, then I think we can officially look at the issues that individuals may have in a much more cost-effective process than we would otherwise have today.

So, I thank Your Honor for your time. And unless you've got any questions, I'll sit.

THE COURT: Thank you, Mr. Entwistle.

MR. ENTWISTLE: Thank you.

MR. SOSNICK: Good afternoon, Your Honor. Fred Sosnick from Shearman & Sterling on behalf of Bank of America. One of the benefits of being in the back of the room and being last is that most of the points were covered so I won't belabor them with the Court.

I just wanted to point out a couple of things. And I think most of what we've heard addresses all of the concerns we had. The principal concerns we had were the fact that we were, in the initial phase of this case, seeing a slew of 2004 requests, in effect, independent examinations. And then the Disney motion, which was yet another request for an examiner or an examination but that was limited in its scope and context. And what we're really concerned about was just being examined to death in this case as a collective group. And with everyone having an uncoordinated approach, that was our biggest fear.

So we think where this is now gelled around is exactly what we would have hoped for as an outcome to this process. We think -- just to address a couple of -- or just to address the Court's questions. We do think the scope outlined by the debtors is largely what we would have envisioned it to have expanded to. We -- I think we're sort of in between as to whether in between the two positions taken by the debtor and the one described by the Court as to whether or not there needs to be a separate financial assistance for the examiner. We do think that we've seen the type of cooperation, accessibility from Alvarez & Marsal that is really very beneficial to this case. That having been said, I do understand the points and took the comments of the U.S. trustee on those points. So we're sort of agnostic ourselves on that.

We do think the most important thing is the

coordination aspect of this and that this be, whether or not there are additional professionals brought in by the examiner, that the examination be done in a coordinated manner with the debtor and the committee so that we're not seeing multiple examinations of the same issues.

We think -- we do like the idea of a work plan. We think it's really very helpful to have a meet and confer in the initial phases of this so that the examiner -- he or she can help develop the plan itself because that's really, I think, the best way to help to bring the parties together in terms of the various aspects of coordination. So we like that and think that it's a great way to proceed.

Other than that, Your Honor, as I said, I would be brief. So that concludes my comments.

THE COURT: Thank you.

MR. ETKIN: Good afternoon, Your Honor. Michael Etkin, Lowenstein Sandler, on behalf of the court-appointed lead plaintiffs in the Securities litigation. As you know, we filed a joinder to that aspect of the comptroller's motion requesting the appointment of an examiner.

I was unaware of the conference call that took place last week so --

THE COURT: I didn't set it up.

MR. ETKIN: -- I might be -- that wasn't for purposes of blame, Your Honor, just to --

THE COURT: I'm just letting you know that --

MR. ETKIN: -- indicate that I might be a little --

THE COURT: -- if you were left out, I'm sure it wasn't deliberately.

MR. ETKIN: Well, perhaps the invitation got lost in the mail but I might be a little behind the curve with respect to that. But --

THE COURT: You're not behind the curve if you've been sitting through this morning's hearing.

MR. ETKIN: That is correct, Your Honor. I just have a couple of things to add to Mr. Entwistle's presentation which we support. First of all, in the bullet point suggested by the debtor, with respect to the investigation of claims that Mr. Entwistle discussed and with the modifications discussed on the record thus far, it appears to be limited to potential claims against former or current directors and officers of one or more of the debtors. I don't think that it should contain that kind of limitation. The facts should lead the examiner wherever it takes him or her. So to the extent that there are claims developed with respect to pre-petition conduct that involve third parties other than directors and officers of the debtors themselves, I don't think that limitation should be contained in the scope of the examiner's investigation.

And just a brief comment with respect to the issue of whether the investigation should be limited to facts and not

move over to potential claims. First of all, I don't know exactly where you would draw that line, Your Honor, in the first instance, in terms of spending the time to stop dead before creating any implication that a claim or a cause of action exists as a result of particular conduct.

But more importantly, there's precedent for all of this. And my own recent experience with the examiner in the Refco Chapter 11 in this court, in the New Century case in Delaware, I think in the Syncrude case, most recently, in Delaware where examiners have been appointed, those all involve investigating and commenting on potential claims and causes of action at the end of the day. I think in Refco, nobody involved in that case could disagree that that aspect of the examiner's report, as well as the examiner's report in New Century, a subprime case, was extremely helpful to all parties in interest. They were both at least A if not A plus jobs. And I don't think anybody suffered by virtue of the fact that causes of action were identified. In fact, I think it probably was indeed a benefit, from at least my perspective, to all parties in interest in each of those cases.

THE COURT: Thank you, Mr. Etkin.

MS. ATTARD: Good afternoon, Your Honor. Lauren Attard of Kaye Scholer for Wells Fargo. Wells Fargo, just so you know, is a creditor of Lehman Brothers Holdings Inc., Lehman Brothers Special Finance and Lehman Brothers Inc. And

we sent a letter this morning to chambers -- about 8:30 this morning. So I apologize for the late notice. But it was a simple comment about the scope of the examiner's investigation.

THE COURT: What sort of letter did you send?

MS. ATTARD: It was just a letter to you copying Mr. Miller, Mr. Dunne, Mr. Bienenstock and Mr. Velez-Rivera.

THE COURT: Just so I know your standing to be heard at this point --

MS. ATTARD: Yes.

THE COURT: -- did Wells Fargo at any time prior to this morning do anything to join in the fray with respect to the scope of the examiner? Or is it --

MS. ATTARD: No --

THE COURT: -- just what happened this morning that gives you the reason to step forward now?

MS. ATTARD: Your Honor, we did not file a joinder in this motion. But we are commenting on what the debtors proposed in their January 8th motion and the suggestions of the scope of the examination.

THE COURT: You're saying you're commenting with respect to the debtors' response to the trustee motion?

MS. ATTARD: Correct. And then the response to the Disney examiner motion.

THE COURT: Okay. I'm hesitating because I think it inappropriate for me to hear what you have to say simply as a

matter of orderly case administration, although it may be that you have something very valuable to add. I'm going to suggest that if you have something valuable to add, you do it during the lunch break because I don't want to establish for purposes of this case what I would consider to be a very unfavorable case management -- I'm not going to use the word "protocol" because it's a bad word to use -- a case management practice.

MS. ATTARD: Sure.

THE COURT: And that is, I have enough to read in preparation for every one of these omnibus hearings based upon what's filed by the stated deadlines. And in order for me to be adequately prepared for the multiplicity of issues that get heard routinely on the omnibus hearing is I plan my week around pleading deadlines that have been established. Yet, I also know that it makes good sense for me to check the ECF system before I come out here. And I do. I'm going to suggest that you simply pass along your concerns to counsel for the debtor, counsel for the committee and the U.S. trustee or other parties who are actually active in the process. And not that I am shutting you down for reasons relating to the substance of what you have to say but rather because of the timeliness with which you're seeking mitigative admission to say it.

MS. ATTARD: I understand, Your Honor. Thank you.

MS. DRORI: Your Honor, Danna Drori, assistant United States attorney for the Southern District of New York. And

keeping in mind what Your Honor just stated, I'm appearing today on behalf of the criminal divisions of the U.S. attorney's offices for the Southern District of New York, the Eastern District of New York and the District of New Jersey, which, as Your Honor is aware, are currently investigating certain aspects of the activities of the debtor.

Our comments today are directed only to one of the paragraph 32 process conditions that was mentioned earlier by Mr. Miller and about which Your Honor spoke about wanting comment. I will say that our offices have been involved in negotiating that language so that while we did not put in a filing because we did not deem it necessary, I'm hoping Your Honor might allow me to very briefly address some of the concerns of those offices that came --

THE COURT: Well --

MS. DRORI: -- with that language.

THE COURT: -- I'm going to permit you to address it and here's the distinction. I reviewed forms of order in reference to the proposed retention of an examiner that included some blacklined language offered by -- I believe it was Mr. Entwistle in his recently filed papers which laid out proposed language to deal with certain issues involving pending governmental investigations. And so I am familiar with the proposed language. And if you wish to comment on it, that's fine.

MS. DRORI: Thank you, Your Honor. That language is the same language that appears as one of the bullet points of paragraph 32 of the debtors' response and as well, I believe, in Disney's most recent revised order. The criminal divisions of these three offices just wish very briefly to alert the Court to potential interference with federal criminal authorities that may arise in the future once the Court has appointed an examiner. Your Honor has indicated that it plans to. And therefore, we have concerns about, to use this word, the "protocol" for interaction between the examiner and our offices. And we have sought language in any examiner order regarding the establishment of a protocol of consultation and cooperation by the examiner with the criminal authorities to avoid interference by the examiner with any ongoing investigation. We've proposed to the parties the language that Your Honor mentioned that Your Honor had seen. It's very similar to the language that was adopted by Judge Drain in the Refco examiner order. And to our knowledge, the relevant parties have either expressed in papers or to me that they do not object to that language and I certainly haven't heard any objections raised today.

As to the coordination issue raised by Your Honor with the various parties who are either investigating or seeking to do investigations, I would note that our offices have also been in touch with the SIPA trustees in this matter

and in the Madoff matter. And both trustees agreed to include in their proposed subpoena power orders language that's substantially similar to the language that we've proposed for the examiner orders. And in fact, Judge Lifland so ordered that language on Monday in the Madoff order when it granted the trustee's motion there for a subpoena power. So to the extent that there is a meet and confer or any master plan as well concerning these investigations, these are certainly concerns that we would raise there and would seek this language as well to address the criminal divisions' concerns.

THE COURT: All right. We'll find out if there's any objection to that language. I don't know if there is or there isn't. But if anybody has an objection to the language you propose, we'll find out.

As it relates to the language that is comparable to this proposed language that appears in the Madoff order that was entered by Judge Lifland on Monday, I'm going to defer that to the SIPA portion of the hearing and when we get to the question of the SIPA trustee's subpoena powers. So that's something which will be later this afternoon.

MS. DRORI: Thank you, Your Honor.

THE COURT: Okay.

MS. GRANFIELD: Good morning, Your Honor. Lindsee Granfield of Cleary Gottlieb Steen & Hamilton --

THE COURT: It's actually good afternoon.

MS. GRANFIELD: Oh, afternoon. Sorry. The afternoon.

THE COURT: We started out this morning but it's now 1 p.m.

MS. GRANFIELD: Cleary Gottlieb Steen & Hamilton LLP on behalf of Barclays Capital. I would like to propose a way of proceeding because there's an issue -- Boies Schiller filed a response to the Disney motion because Cleary Gottlieb has conflict with Disney. I will not be speaking on the scope issues. And so, I'd just like permission, if it's acceptable to Your Honor, to take two minutes on the coordination issue 'cause I think that -- and the protocol issue 'cause I think that's a broader kind of non-Disney specific issue.

THE COURT: It's your conflict. If you feel comfortable, it's up to you.

MS. GRANFIELD: Okay. But then have permission for Mr. Hume to just make a couple of comments on scope.

THE COURT: That's fine.

MS. GRANFIELD: Thank you very much, Your Honor. Your last issue, Your Honor, the last comment that you made about meet and confer and protocol and coordination -- and this comes up, and it'll come up this afternoon with respect to the trustee, that we're obviously very concerned about coordination. And the specific reason we are is that with respect to the sale, Barclays did come into possession of

systems and information that, in many cases, is information that, through the TSA and other avenues, it is giving access to LBHI, to the trustee. And with respect to coordination and a protocol, while it could be done in a few different ways, we don't necessarily have to be involved in every step of a meet and confer. But I'd like to suggest that want to avoid having big cost issues relating to parties asking Barclays to do many things in responding to an examiner or responding to other people's request or helping other people respond that will come in because it's under the TSA and other issues. It has the ability to ask for its cost to be reimbursed. And that we also avoid any issues where the examiner is asking one party, LBHI, the LBI estate, for information. And instead of going to those parties to ask for it, it kind of just comes to Barclays. Barclays has to obviously involve those parties because it's really their information. And so it's just an aspect of coordination that makes us believe it probably does make sense to have Barclays be part of that meet and confer. But we will obviously leave it to the parties and Your Honor. And we would assume that any protocol that comes out of that will come before Your Honor and there'll be a chance for people to look at it and that it be only approved after notice and hearing.

Those are just the preliminary comments, Your Honor.

THE COURT: Okay. I understand those comments. I have an immediate reaction which is if the parties to the

proposed meet and confer believe it would be efficient to have Barclays in the room for some or all or none of the proposed meeting, I'm not going to order it because I don't think that Barclays is directly involved in the question of scope. What you're really doing is putting everybody on notice that Barclays, to the extent it is inconvenienced or to the extent that there is a related consequential expense, is reserving its right on the question. And so you're proposing that maybe it's just as well to head off this issue with a pass.

MS. GRANFIELD: I agree with those comments, Your Honor --

THE COURT: Okay.

MS. GRANFIELD: -- in terms of why I made them.

THE COURT: I understand your point.

MS. GRANFIELD: Very good. Let me just yield the podium for two minutes then to Mr. Hume.

MR. HUME: Thank you, Your Honor. Hamish Hume from Boies, Schiller & Flexner also for Barclays. Your Honor, I think we just have a couple of related points on scope. Nothing major because on most of the issues we don't take a position. But on a couple, we do want to raise that it's stemmed from our original objection to the original Disney motion.

To the extent, Your Honor, there's been back and forth on whether the examiner should be assessing claims or

developing claims or investigating claims as opposed to facts that may underlie claims, how ever that may be resolved, I think Barclays would simply want it to be clear that the claims that may be looked at would be the claims of the estate for the benefit of all of the estate and all creditors and not -- that the examiner not be allowed to be used to -- with any topic to be used to develop, as Mr. Miller, I think, correctly said, the parochial claims of one or two creditors who may be trying to investigate claims against Barclays. And we certainly did interpret the original motion by Disney to be in part an effort to do that which we do object to and did object to as inappropriate. It's not an appropriate use of the resources and it is at odds with the sale order which make clear that there is no successor liability and that we acquired the assets free and clear.

THE COURT: I understand the point you're making but I disagree with the fundamental premise of the point because I believe that what Walt Disney has asserted -- and, incidentally, this stems back to the evening of September 19 when there was considerable discussion on this point and what counsel, in a separate matter, on behalf of the Bank of New York Mellon as indenture trustee has asserted with respect to a different Lehman affiliate -- is that claims aren't being made on behalf of individual creditors as much claims are being made that the, at least in the case of Disney, that the examiner

should be free on an estate by estate basis to investigate. Hence, the discussion about whether we need fifteen or nineteen or how ever many separate examiners might be needed to pursue the rights of estates that have separate creditor constituencies. So I'm understanding the argument you're making. I'm simply distinguishing it because I'm not sure that that's what Disney said.

MR. HUME: Hopefully, if the argument's in apposite then the concern's not there. I'm simply expressing the concern -- we did receive a letter right before that motion asserting successor liability claims which we think are meritless. And then we see an examiner motion seeking to develop facts that appear to us to be relevant to those claims. And we don't --

THE COURT: It may be that it's right to conflate the two and it may be that it's not.

MR. HUME: I think, hopefully after today, it is not and that, if I understood Mr. Bienenstock correctly, he said that he was okay with the -- he was no longer pressing the scope as pushed in his original motion but was consenting to what the debtors have proposed. And if that's true then presumably it does not involve an attempt to develop claims that are at odds with the sale order which we think would both be inappropriate and a waste of resources.

We would maybe ask that the order make clear,

whatever order there is, that it's obviously not intended to obviously amend the sale order or allow for a collateral attack on the sale order.

THE COURT: I would personally resist any such language in the order. I believe that the examiner motion is free standing, the sale order says what it says and is, incidentally, on appeal. And as far as I'm concerned, we're dealing only with a matter which is presently before the Court which is the examiner motion. And I would strike out from any proposed order language that would seek to put a ring fence around an order that has already been entered and that is subject to appeal.

MR. HUME: Your Honor, the only other comment which is related is that to the extent the examiner is being asked -- well, there is a request in one of the bullet points, the sixth bullet point, to investigate whether assets of LBHI subsidiaries, LBCC or other LBHI subsidiaries, were transferred to Barclays Capital and whether that could create any claims. Again, we think that request -- there's no basis for it, actually. I think both the debtors and the creditors' committee agree that there's no basis for asserting that there may be assets of these subsidiaries that were transferred. The sale order is clear that those assets were not what was being transferred. The agreement is clear. Again, we would submit that it is not an appropriate topic for investigation.

THE COURT: Let me ask you a question just hypothetically. Assume for a moment you have an absolutely clear sale order and absolutely clear representations that were made on the record that led to the sale order concerning what assets were being transferred pursuant to that order but that, in practice, either mistakes were made or through inadvertence or maybe because it was deliberately, I have no idea -- let's just say, it doesn't even have to be in this case, that assets were misappropriated under the guise of a sale order. Are you suggesting that an examiner would have no ability to recover misappropriated assets that were transferred either by mistake or by design under the apparent color of law? You're not saying that?

MR. HUME: No, Your Honor, I'm not. But I am saying, I'm agreeing with the debtors and the creditors -- certainly the creditors' committee that, in the first instance, that would be something presumably that the debtors would themselves look at or raise -- if there was a question to be raised that they would raise it. Or the creditors' committee.

THE COURT: Well, they've been pretty busy. They've been doing a lot. And it may be that the sale to Barclays having closed that in the compartmentalized world, they moved on to problem 2 and 5 and 12 and 25 or whatever the number of problems that they were dealing more or less simultaneously. And so, while I hear you, I think that one of the purposes to

be served by the advent of an examiner which is salutary is that someone with no present history or involvement in this massive transaction has a chance to come in for purposes of not only fulfilling the statutory mandate but for purposes of doing something that I think is very beneficial in this case, now and in the future. Walt Disney has used the term "sunshine". I'm going to adopt it.

The purposes to be served by the examiner include giving everybody involved in this case a heightened sense of confidence that what happened pre-petition and immediately post-petition is something that we can all comfortably rely on for purposes of planning the future of this bankruptcy case. And so while terms like "transparency" have been used so frequently as to take on an almost hackneyed tone, it represents perhaps the most singularly important feature of ongoing case stability which is confidence and trust that the information that we all assume to be true in fact is true.

For that reason, I resist your notion that Barclays is entitled to some special immunity by virtue of the sale order. You have what rights exist under that sale order. But the examiner is absolutely free in his or her discretion to make sure that what was done in a hurry was done correctly.

MR. HUME: I understand, Your Honor. We understand. Simply, there have been suggestions made which we think are totally unfounded and we felt the need to reply.

THE COURT: I understand you're protecting the record on behalf of the client and you've done.

MR. HUME: And as a matter of emphasis to the examiner that it not be suggested to it that there's a reason to believe that there are -- that the transaction was different than it was planned to be and stated to be.

THE COURT: But the examiner will have an opportunity to confirm that based upon whatever investigation the examiner deems appropriate.

MR. HUME: Thank you, Your Honor.

THE COURT: Thank you. The creditors' committee has been, I guess, waiting for this opportunity to back cleanup. And as soon as you're done, we can take a lunch break.

MR. FLECK: Your Honor, Evan Fleck of Milbank Tweed on behalf of the creditors' committee. Your Honor, we have been listening attentively to the Court's comments and the comments of the various parties that responded to the trustee motion, the examiner motion. We would request, however, at this point, because we see that there may be areas in which we have reached even further agreement. We want to be responsive to the Court's comments. That if we could take a brief bit of time now to confer among ourselves to see where that agreement exists, we would appreciate that or, alternatively, following the lunch break.

THE COURT: It's now a quarter past 1 and we've been

at this since about 10:05 a.m. without a break. And I think that if you believe a break is something that would be useful to the process of achieving consensus, that's cause enough to take a break. But I also think that biology suggests that it's time for us all to take a longer break than that. And I'm going to suggest that we break now and that we return at 2:30.

MR. FLECK: Very well. Thank you, Your Honor.

THE COURT: We're adjourned.

(Recess from 1:15 p.m. until 2:32 p.m.)

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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Date: January 15, 2009